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1	Plaintiff's Exhibit	Decemination	Domo	1	APPEARANCES
2	EXUIDIT	Description	Page	2	For the Plaintiff, MAROUETTA WILLIAMS:
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4	18	2023 AELE Presentation - Video	84	4	JOE F. FOUCHÉ, III, Esquire (via Zoom)
5	19	Certificate of Organization for	97	5	DiCello Levitt, LLP 8160 Norton Parkway, Third Floor
6		Eques Group, LLC	3,	6	Mentor, Ohio 44060 440-953-8888
7	20	Randall L. Murphy - LinkedIn Page	100	7	rfdicello@dicellolevitt.com jfouche@dicellolevitt.com
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11	23	Office Huber In-Service Attendance Sheet	195	11	KEVIN L'HOMMEDIEU, Esquire
12	24	"National Consensus Policy and Discussion Paper on Use of Force"	12 220 12	(via Zoom) VIVIANNE DUFFRIN, Esquire	
13				13	(via Zoom) CARRIE D'ANDREA, Esquire
14				14	(via Zoom) 218 Cleveland Avenue, Southwest
15			15	Canton, Ohio 44702 330-489-3395	
16				16	kevinlhommedieu@cantonohio.gov
17				17	
18				18	For the Defendant, ROBERT HUBER:
19				19	MEL L. LUTE, JR., Esquire
20				20	ANDREA K. ZIARKO, Esquire (via Zoom)
21				21	Baker, Dublikar 400 South Main Street
22				22	North Canton, Ohio 44720 330-499-6000.
23 24				23 24	<pre>lute@bakerfirm.com andreaz@bakerfirm.com</pre>
				24	
25				25	

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1	JOHN D. LATCHNEY, Esquire	1	DARRELL L. ROSS, Ph.D.,	
2	(via Zoom) Hanna, Campbell & Powell, LLP	2	having been first duly sworn, was examined and testified	
3	3737 Embassy Parkway Suite 100	3	as follows:	
4	Akron, Ohio 44333 330-670-7602	4	MR. DICELLO: And just for the record, we're	
5	jlatchney@hcplaw.net	5	going to be providing copies of everything shown here digitally	
6		6	to the group after the depo. If anybody needs anything during	
7	ALSO PRESENT: Mr. Jonathan Cope	7	the depo, please let me know.	
8	(via Zoom)	8	EXAMINATION	
9		9	BY: MR. DICELLO	
10	PRELIMINARIES:	10	Q. All right. Good morning, Doctor.	
11	(Disclosure submitted to all counsel.)	11	A. Good morning.	
12	(Ms. Ziarko not present in Zoom meeting.)	12	Q. Could you please state and spell your name for the	
13	(MS. Ziaiko not present in Zoom meeting.)	13	record?	
		14		
14			A. Darrell Lee Ross, D-A-R-R-E-L-L; middle initial or	
15		15	middle name, Lee, L-E-E; last name, Ross, R-O-S-S.	
16		16	Q. Okay. I know you've been deposed before.	
17		17	A. Yes, sir.	
18		18	Q. And so I'm not I'm going to spare you the rules	
19		19	the reading of the rules and all that. But if you have any	
20		20	questions for me as we go forward, please don't hesitate to	
21		21	clarify anything that comes up as we go, fair?	
22		22	A. Okay.	
23		23	Q. I understand that you rely upon your background,	
24		24	knowledge, education, and training as a corrections officer to	
25		25	form your opinions?	
1	MR. LUTE: Objection. You may answer.	1	that time scrolling it against my time with the witness today?	
2	A. As well as additional knowledge and information	2	Is that okay? I'm not going to have a lot of these kinds of	
3	teaching police officers.	3	exhibits.	
4	Q. In Exhibit 1 we have on the screen, is is that a	4	MR. LUTE: Yeah. No, go ahead.	
5	copy an accurate copy of your CV current CV?	5	MR. DICELLO: Okay. Thank you.	
6	A. I believe so, yes.	6	Q. All right. So you've had a chance to look at every	
7	Q. And you know what	7	piece and page of Exhibit 1, your CV; is that right?	
8	A. January '24.	8	A. Correct.	
9	Q I'm going to do? I'm going to give you the mouse	9	Q. And is it a complete and current copy of your CV?	
10	wheel here so you can scroll make sure you get a chance to	10	A. Correct. With the addition that I already have	
11	scroll the entire thing. I think you should be able to just	11	articulated.	
12	bring it up as you can. There you go. We'll get through the	12	Q. All right. I'll to show you what's been marked as	
13	wonky technology problem here in a minute. You can scroll	13	Exhibit 2. This is your testimony list. Same question, if you	
14	through it, just I just want you to confirm it's the whole	14	could just take a look at it. Scroll it please, and when	
15	CV.	15	you're done, let me know.	
16	A. Oh, okay. This mouse is taking forever, but	16	A. Yes.	
17	Q. Sorry.	17	Q. Okay.	
18	A it looks it looks now I think I'd add in	18	A. Three pages.	
19	professional training activities. In May, I'm on the I'm	19	Q. And I I understand that that is a copy of your	
20	scheduled to make a presentation on managing use of force and	20	testimony from just 2018 to 2023; is that right?	
21	supervisory liability at the annual AELE or excuse me, AELE,	21	A. That's correct.	
22	Americans for Effective Law Enforcement Conference in Vegas,	22	Q. Okay. Have you testified since 2023 in any	
23	but that's current. That's it.	23	proceeding?	
24	Q. All right. Thank you.	24	A. Go back up.	
25	MR. DICELLO: And, Counsel, could we not count	25	Q. Okay.	
			-	

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Okay. Have you testified in any courtroom

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A. I took a deposition -- if I can get this, would be

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phone?

O. Let's start with met with them personally.

A. Not until today.

A. Yes.

Q. How about on the phone?

Number 35, Raimy versus City of Niles, that would back -- back 2 proceedings not listed on this report -- or rather in this 2 in January, the deposition. And let's see, Number 42, Hehrer exhibit? 3 4 versus Clinton County, I took a deposition, and Number 44, 4 A. Lovell v. Kalamazoo. The Hehrer case was a deposition back in With respect to your testimony shown on this exhibit, October, and Lovell was also in February, Number 44. That's 6 6 has any of it been for a plaintiff? A. No. 8 Q. Okay. So in October, you took a deposition with Have you ever testified for a plaintiff? 9 respect to item Number 42? 9 A. I've written reports for a plaintiff attorney and plaintiffs on behalf of plaintiff. A. Correct. 10 10 Q. In February, you took a deposition with respect to Q. Have you ever testified on behalf of a plaintiff's 11 11 item Number 44? case in court? 12 12 A Correct 13 13 A. No. O. And with respect to item Number 35, what was -- when 14 14 O. Do you know how many cases you are currently did you take that deposition? 15 scheduled to testify in, in this calendar year? A. I think it was January 29th or 30th of this year. A. If I can -- I need to look at this real quick. I 16 16 O. Okav. don't have any scheduled trials pending at this time that I'm 17 17 18 A. This is not working. It's froze. 18 You went up. You got to pull the -- get the arrow 19 19 O. Do you -- are you -- are you retained on cases for 20 over the document. Yeah, you'll just push around. 20 this calendar year in addition to this case? A. Well, it's somewhere here. 21 A. Just the ones on that list. 21 You're on my screen. So I'm below you if that makes Q. Okay. So as we sit here today, you are not retained 22 22 23 sense. Here you go. Oh, you got to go up. 2.3 on any other matters except for what's on the list and this 24 A. Yeah, 35, that would've been January of this year, matter; is that --24 '23. A. Yes, that's correct. Q. What is your rate to testify in deposition? 1 1 Q. And who -- with whom have you spoken prior to today 2 A. In deposition? 2 regarding this matter? A. Mr. Beck, Mr. Lute, and Mr. L'Hommedieu. 3 3 It's \$3,000 for the dep, flat fee. 4 4 O. And do you know what the reason was for your Q. And that \$3,000 is paid by the party who deposes you; conversations with Mr. Beck? 5 5 6 is that right? A. I think it was originally back in August of '23, when 7 A. That's correct. I was originally contacted to consider working on the case. Q. What is your hourly time on cost or charge on a case Q. And do you remember what you said in that? 8 8 9 that you're retained on? 9 I said I'd be interested in looking at the material A. Hourly time? as a fact-based information and what was forward, the 10 10 Q. What is -- what is the charge that you have or what's information. 11 11 12 the way in which you charge or bill for a case you're retained 12 O. And at the same time that you spoke with Mr. Beck, did you speak with anyone else from his office? 13 13 A. Not at that day, not that I recall. 14 A. \$450 an hour. 14 O. Prior to receiving materials on the case, did you 15 O. Do you know how many hours of time you've spent on 15 16 this particular matter? 16 speak to any other attorneys? A. Yes, 50. 17 A. No. 17 18 Q. Do you know if you've met with any of the attorneys 18 Q. After -- first -- and so when you received materials 19 in this case regarding that 50 hours? 19 on the case, do you remember what you first received? A. Met with them personally or talked to them on the A. Everything that's on my report. A thumb drive of 20 20

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investigation that I received.

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every item and document and video that's on my report. So

there's quite lengthy number of documents, but on my report

O. And was -- were those the materials that you reviewed

I've documented every document, item, video, report,

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- in order to decide whether you were going to take this matter?
- A. That was part of it, yes. 2
- 3 O. Anything else?
- 4 A No
- What was it about the materials reviewed that stands
- 6 out to you today? We'll go over them later but in more detail.
- But what was it about the materials provided in your initial
- review that stood out to you?
- 9 A. Well, to boil it down to just to be responsive, I
- think the -- the volume and intensity and cadence and the speed 10
  - of the gunfire that Mr. Williams was firing and the limited
- reaction time that Officer Huber had to determine how to 12
- 13 respond.

11

- 14 O. And that was your initial --
- A. Initial. 15
- 16 Q. -- conclusion or opinion upon reviewing the first
- materials you received; is that right? 17
- 18 A. It's -- that's best of my recollection, yes.
- Q. And that would've been -- where would that 19
- 20 information which formed the basis of that initial conclusion
- have been found? What materials do you recall looking at? 21
- A. There were several videos that I reviewed. There was 22
- 23 the prosecutor's summary from the Bureau of Criminal
- 24 Investigation report, their interviews and report, as well as
- Officer Huber's report and interview with BCI. That's the

- initial impression.
- 2 Q. Yeah, and we're -- we're just talking initial
- 3 decision to take the matter?
  - A Yes
- All right. Following your receipt of the initial
- 6 round of materials and your initial review, you spoke to
- Mr. Lute: is that right?
- A. Later -- well, it was kind of interesting because
- 9 there was a lag time in terms of reviewing materials. And just
- 10 around -- before Christmas, I got an email that said the report
- was due in January, which I hadn't learned that before. So it 11
- was kind of a quick -- I mean, I had read the materials, but we 12
- 13 had conversed. It was either Mr. Lute or Mr. Beck, one of the
- two, that we talked about the -- the need to get the report in, 14
- 15 and I wanted -- just wanted to make sure I had everything, and
- 16 I had everything.
- O. All right. Is that the sum and the substance of what 17
- 18 you recall talking about with Mr. Lute or was there additional
- topics that you discussed with Mr. Lute? 19
- 20 A. No, not that I recall, just going over some of my
- preliminary opinions, my impressions, and that was about it. 21
- Q. Same with Mr. L'Hommedieu, do you recall what you 22
- 2.3 discussed with him?

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- A. Yes. This would've been after the new year. I don't 24
- remember the -- recall the specific date, but it was to also

- provide opinions about the training of Officer Huber and the policies of Canton Police Department.
- Q. Is that the sum and substance of what you recall 3 4 discussing with Mr. L'Hommedieu?
- 5 A. Yes. And just the policies, procedures, protocols of 6 the Canton Police Department and officers' training.
- 7 Q. When you write a report for someone who is
- retained -- retaining you, could you describe your approach 8
- 9 from a bias point of view? What it is that you do to control
- for bias? 10

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- A. Well, I use the methodology called content analysis. 11
- 12 I also use grounded theory, which assimilates a triangulation
- approach to all of the documents that I've been provided. And 13
- so I painstakingly go through all the interviews, all the 14
- 15 reports, the videos that are provided, the policies and
- procedure, the training records, background and experience of 16
- the officer that's involved or officers that may be involved. 17
- It's quite a intensive kind of review; the contents -- the 18
- 19 historical value of those contents that are contained within
- the file itself: the trends, the patterns, the themes that
- 21 begin to emerge. That gives me a sense, an idea, of the
- 22 patterns of what I'm dealing with in a particular case. I also look at the deposition testimony, the 23
- 24 interview testimony. I kind of try to cross-reference those to
- see if there's any gaps or consistencies with the testimony, 2.5

- 1 any witnesses that may be involved, and certainly the evidence
- that's provided that's in the file material. So it's a combination, what I call a triangulation, which is a research 3
- 4 methodology that brings all the sum and substance in to develop
- 5 patterns and themes and trends consistent with what the issues
- as I see them in the particular case or the allegations that
- are made, claims, assertions.
  - Q. And is that the full extent of how you approach
- 9 this -- the notion of bias when you draft a report?
- 10 A. I would say so, yes.
- Q. Although you've never testified for a plaintiff in 11
- 12 court, you said you have authored reports for plaintiffs?
  - A. Yes, I have.
- 14 Q. When was the last time you did that?
- 15 Let me see, would've been 1999 or 2000, somewhere in
- 16 there. It would've been a Mississippi case, a motor carrier in
- Mississippi as I recall. 17
  - O. So either 24 or 25 years ago; is that right?
- 19 A. Correct.
- 20 When you create a report, you are asked to reach
- 21 various opinions. You're familiar with that process, right?
  - A. Correct.
- In this particular instance, were you asked which 23
  - opinions to create or did you create the opinions and offer

16

25 them to counsel?

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- 1 A. I created my own opinions. That's part of my
- 2 methodology.
- 3 O. I say that because there was some conversation
- 4 regarding, I think, one of the attorneys that you offered --
- 5 that discussed a training?
- 6 A. Yes. They wanted me to look at the training. So in
- 7 looking at the records and the testimony. I formed my own
- 8 opinion. But it was in that topic area of that particular
- 9 subject matter.
- 10 Q. Were you directed to any of the subject area or
- 11 matter by the attorneys?
- 12 A. No
- 13 Q. Okay. All right. If I could have the -- let me go
- 14 back. We're going to put up on the screen what's going to be
- 15 marked as Exhibit 3 that is your report, God willing. If you
- 16 could, just scroll through that and make sure we have a full
- 17 copy for the audience.
- 18 A. This is going to take some time. This is longer than
- 19 the CV.
- 20  $\,$  Q. By my count, it was about one page per hour that you
- 21 spent on the case.
- 22 A. Just about, yes, sir.
- 23 Q. Okay. Have you had a full opportunity to review
- 24 Exhibit 3, your report?
- 25 A. I didn't read, but I scrolled through the pages that
- - 17

- 1 I submitted, ves.
- 2 Q. And do you -- do you have a copy in front of you?
- 3 A. Yes, I do.
- 4 Q. All right. And so did you, in scrolling the report,
- 5 have any concern that the document is other than the document
- 6 you have in front of you right now?
  - A. I don't have any other concerns.
  - Q. Okay. And so your report, is it complete and
- 9 current?
- 10 A. Yes.
- 11 Q. Are there items listed or identified that you relied
- 12 upon in your report that are new? Meaning, have you received
- 13 any new information or materials other than the items listed in
- 14 your report?
- 15 A. N

16

- Q. And so the items that you reviewed were compre--
- 17 is -- and -- that are listed in your report are comprehensive
- 18 and accurate; is that right?
- 19 A. Yes, they're....
- 20 Q. And --
- 21 A. When you mean "comprehensive," I've reviewed -- are
- 22 you talking about the file that I reviewed, or....
- 23 Q. Comprehensive as to your opinion. It's the -- it is
- 24 the sum total of what you relied upon --
- 25 A. Yes --

18

- 1 Q. -- for your opinion?
  - A. -- yes, sir.
- 3 Q. Okay. Does your report contain all of your opinions
- 4 about this matter?

2

5

- A. Yes.
- 6 Q. As my first question began today, I asked you what
- 7 you relied upon. And I started with your background,
- 8 education, knowledge, and training with respect to a
- $9\,$   $\,$  corrections officer. Do you recall that question?
- 10 A. Yes
- 11 Q. All right. And I understand you have additional
- 12 items that you rely upon beyond being a corrections officer --
- 13 A. That's correct.
- Q. -- in forming your report; is that right?
- 15 A. That's correct.
- 16 Q. You rely upon your teaching experience to form your
- 17 opinions, correct?
- 18 A. Yes.
- 19 Q. And your teaching experience is fully stated in your
- 20 CV?
- 21 A. I don't think it's full. That -- that's only a
- $\,$  22  $\,$  portion of my teaching and/or training.
- 23 Q. What would you like to add to your testimony here
- 24 today that your CV you think doesn't cover or that would more
- 25 fully give us an understanding of your teaching experience?

- 1 A. Well, I've taught over 25 different courses at the
- 2 university level, and I've taught -- I don't even have a number 3 of all the training -- the training topics, but they're listed
- 4 in my CV. So I identified what I thought were pertinent to my
- 5 opinions based on the factual fact pattern and incident of
- 6 this -- of this particular incident.
- 7 Q. Okay. And as any courses or teaching experiences
- 8 come up that you think are relevant, then please let us know.
  - A. I sure will.
- 10 Q. That is, those that are not listed on the CV. Okay?
- 11 A. Yes

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- 12 Q. You rely upon the articles you've authored over the
- 13 years to form your opinions; is that right?
  - A. As appropriate.
- 15 Q. You rely upon the books you've authored, including
- 16 "Civil Liability in Criminal Justice," 8th edition, published
- 17 in 2023, to form your opinions; is that right?
  - A. Yes, it's true. It's correct.
  - Q. And that includes your other book that you authored,
- 20 "Guidelines for Investigating Officer Involved Shootings,
- 21 Arrest Related Deaths, and Deaths in Custody," published in
- 22 2018, to form your opinions; is that right?
- 23 A. Yes. It's a co-authored text, but yes.
  - Q. You rely upon your experience consulting for law
  - enforcement agencies to form your opinions; is that correct?

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- 1 A. That's true.
- 2 Q. You rely upon your attitudes and beliefs about law
- 3 enforcement to form your beliefs; is that true?
  - A. Yeah, I would agree. That's fair, yes.
- ${\tt 5}$   $\,$  Q. And you rely upon the documents and evidence you were
- 6 given in this case to form your opinions?
- A. Yes.
- 8 O. What is a criminal justice practitioner? It's a term
- 9 I've seen you use repeatedly throughout your speaking and
- 10 writing.

4

- 11 A. Yeah. It is one that is employed by various entities
- 12 or agency or organizations within the criminal justice system,
- 13 vis-à-vis law enforcement, corrections, sheriff's departments,
- 14 state police, courts, parole and probation, community
- 15 supervision. So all entities within the criminal justice
- $\,$  16  $\,$   $\,$  system that are charged or the mission of them is to serve the
- 17 public.
- 18 Q. And so these would be the government side of the
- 19 criminal justice system; is that right?
- 20 A. That's correct.
- 21 Q. Throughout your life, you've been a dedicated
- 22 consultant, trainer, proponent, and defender of criminal
- 23 justice practitioners and their agencies; is that fair?
- 24 A. Yes. But I would -- but I would also expand that to
- 25 look at making sure that in all aspects of that, that equal --

2 diverting control

equal representation, equal justice issues, due process issues

- 2 are identified and maintained and served within the criminal
- 3 justice system.
- ${\tt Q.}\quad {\tt Could}$  you give me an explanation of what you mean by
- 5 that?
- $\mbox{\bf 6}$   $\mbox{\bf A.}$  Well, as I -- my impression of your question seems to
- 7 suggest that I'm only one side of a criminal justice issue, but
- 8 I would differ and say I'm looking at it from a holistic
- 9 situational aspect of whether the criminal justice serves the
- 11 and accountable and transparent it is.
- 12 Q. What do you mean when you say, "a holistic
- 13 situational aspect"?
- 14 A. Well, looks at all sides, looks at all issues, looks
- 15 at all topics, looks at all subject matters, all emerging
- 16 trends and patterns and issues that are within the criminal
- 17 justice system that impact the law enforcement position or job
- 18 or position, as well as those that work in the legal system,
- $\,$  19  $\,$  both defense and prosecutorial, judge, judicial, as well as the
- 20 correctional entities.
- 21 Q. Okay. And so my -- I'm trying to understand the
- 22 nuance, what you're reacting to in my question -- my initial
- 23 question about your dedication was the suggestion or inference
- 24 that you heard in it that you're just one-sided?
- 25 A. That's what I heard.

Q. Okay.

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- A. That's my impression.
- 3 Q. Let me ask the question again, see if it's -- if you
- 4 get the same. Throughout your life, you've been a dedicated
- 5 consultant, trainer, proponent, and defender of criminal
- 6 justice practitioners and their agencies?
- 7 A. I guess I'm having problems with the "defender," like
- 8  $\,$  I'm flying around the country with a cape on my back as the
- 9 defender for those. And so I have a problem with that term  $\,$
- 10 however you're using that.
- 11 Q. Any --
- 12 A. But I would say, as I have been asked that particular
- 13  $\,$  question from different angles in the past, that I'm
- 14 certainly -- that I've worked in the criminal justice system as
- $\,$  15  $\,$  a corrections officer and as a professor preparing men and
- $\,$  16  $\,$  women to enter the field. To me, that's dedicated and devoted.
- 17  $\,$  I don't know the -- the aspect of defender, I guess that I
- 18 would differ with you there, but other than that --
- 19 Q. And -- and so --
- 20 A. -- we're on the same page.
- 21  $\,$  Q. -- I understand that some folks who do litigation try
- 22  $\,$  to disparage or attack other people, and I try to avoid that at
- 23  $\,$  all cost. I just don't believe in that. So let me give you an
- 24  $\,$  understanding of what I mean by "defender."  $\,$  I mean, for the
- $\,$  25  $\,$  last 24 or 25 years, you have testified in defense of criminal

- 1 justice practitioners, fair?
- 2 A. Primarily.
- 3 Q. Yes, and their agencies?
- 4 A. Correct.
- 5 Q. All right. So in that context, you've been a
- 6 defender of their agency -- criminal justice agencies and
- 7 personnel, fair? That's all I'm getting at.
- 8 A. In that capacity. But it's -- it also has to be, I
- 9 think, attributed to a portion of your question that I -- I
- 10 look at both sides of the issue. Okay? And in that act of
- 11 making presentations and writings and publications and working
- 12 with agencies, I also point out potential problems and
- 13 deficiencies that are part and parcel of my work as well. So
- 14 it's not just a pie chart of 99 percent this and only
- 15 1 percent, but it -- it's looking at various aspects and that's
- 16 how I've tried to -- through my consulting, training,
- 17 education, and -- and working with various entities throughout
- 18 the -- the time that you've referenced.
- 19 Q. I want to make sure I understand your answer fully.
- 20 You -- when you do your reporting or you're testifying, you
- 21 consider both sides of the case; is that --
  - A. Oh, absolutely --
- 23 Q. -- okay.

22

- 24 A. -- yes, sir.
- 25 Q. And you have chosen over the last 24 or 25 years to

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- only testify for defendants in civil justice or civil rights October 29th, 2020. It's a clip of something that you said. related litigation; is that right? 2 MR. DICELLO: Go ahead. 2 MR. LUTE: Objection. Go ahead. 3 3 {Playing of video started.} 4 A. Well, in terms of "chosen," I'm very selective in the 4 {Playing of video stopped.} MR. DICELLO: Thanks, Joe. You can -- you can cases that I work on. So there's an aspect of selection. But quite frankly, I don't get called by plaintiff's attorneys to 6 6 turn off sharing. do work. And I've certainly turned down many, many, many -- I 7 O. Okay. Did you have an opportunity to hear and see can't even tell you how many cases I've turned down because I Exhibit 4? 9 felt that whatever the topic matter may be, that was not a good 9 A. Yes. fit for me to -- to work in that particular case based on 10 O. It -- is it -- is it fair to say that you believed 10 different problems and issues that emerged out of the incident. 11 when you said the words that it was, "a most challenging time 11 Q. And so the matters you've testified to in the last 24 for criminal justice agencies," when you said those words? 12 12 13 or 25 years were matters that you felt fit you? 13 A Yes A. Absolutely, without question. O. You believe that? 14 14 15 O. Let's see if I can get this to work now. I have an 15 Exhibit Number 4. It's going to be a video of you. Make this 16 16 Q. And you believe that today? work. I want you to listen to the video for a second as we 17 17 A. Yes, I do. 18 make it play. Tell me if you remember your webinar of 18 Q. And I -- I noticed that you have -- and I've seen October 29th, 2020, and your comments offered here. Wait a 19 19 this in other times when you've spoken and we'll see some more, second. I don't know how to fix that. 20 20 but you do have a genuine -- this is not made up -- this is a COURT REPORTER: Can we go off the record? genuine regard for those in law enforcement, don't you? 21 21 MR. DICELLO: Yes. 22 22 A. Absolutely. 23 (A discussion ensued off the record.) 23 Q. And you, yourself, having been in the community of Q. All right. We finally figured out the technical it, I want to show respect to the fact that -- that just --24 24 problems. Let's play Exhibit 4 from your seminar of just for having genuine regard, I'm not trying to take a shot 1 at you. Do you understand that? 1 A Yes 2 A. It depends on what you say. O. By October? And I -- and I think that's fair, but I want to make A. Oh, yeah, yes. There was -- that happened in May or 3 3 early June -- late May. I think it was Memorial Day weekend as 4 sure that we understand each other that right now your genuine 4 regard for law enforcement was evident in Exhibit 4; is that I recall. 5 7 A Yes A. So Portland, Oregon, was going through it. Detroit was going through it. There was different -- different --O. And you hold that same belief, that same regard, 8 8 9 today for law enforcement? 9 Q. But those were all reactions to George Floyd. I just want to make sure we're clear that the national media was 10 10
- 11 Q. And you indicated that you would include yourself in 12 their choice of continuing to persevere. You said, "As we
- iz their choice of contenting to persevere. Tou bara, his we
- 13 continue to persevere." Do you remember saying that?
  - A. Yes, I remember saying that, yes.
- 15 Q. What is it that needs -- needed in October of 2020,
- 16 that law enforcement needed to persevere through? What were
- 17 you referring to?

14

- 18 A. The whole issue of communities distrusting law
  19 enforcement and going through defunding the police, riots,
- 20 disturbances.
- 21 Q. You're referring to the George Floyd riots at the 22 time?
- 23 A. Well, there were all sorts of riots during that time, 24 not just George Floyd.
- 25 O. In 2020?

- 11 showing only riots in those cities related to George Floyd?
- 12 MR. LUTE: Objection. Go ahead.
- 13 Q. Is that your -- is that your recollection?
  - A. No. I think it was a -- New York City certainly
- $\,$  15  $\,$  through the summer. I think it was more than that. So that
- 16 might've been the trigger, the catalyst, but it was certainly
- 17 much more than -- more than that.
- 18 Q. What are you referring to? More than -- much more 19 than George Floyd?
- 20 A. Yes, yes.

14

21

24

- Q. What are you referring to that -- that you're --
- 22 A. Well, police, in general, and criminal justice
- 23  $\,\,\,\,\,\,\,\,\,\,\,\,\,\,\,\,$  practitioners, in general. And so -- but this has been going

on prior to this, the kinding to work with society. I mean,  $\ensuremath{\mathsf{I}}$ 

28

25 go back to the '60s, so -- and -- and there's ebbs and flows

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through our society, through our culture. And so it -- it's
                                                                                       1
                                                                                                            MR. L'HOMMEDIEU: What exhibit is this?
      made it a difficult job to -- I see it at the -- at the
                                                                                       2
                                                                                                            MR. DICELLO: It's going to be Exhibit
 3
      institution where I work at in higher ed, difficult to -- to
                                                                                       3
                                                                                            Number 5.
 4
      recruit students to seek education in criminal justice, let
                                                                                       4
                                                                                                           MR. L'HOMMEDIEU: And what is it again please,
      alone recruit officers to work in agencies.
                                                                                            Bobby?
 6
               So it's -- it's a challenging time for -- if you're a
                                                                                       6
                                                                                                           MR. DICELLO: One second. Let me get right to
      chief or a sheriff or an officer, but this is not the first
                                                                                            the number here, 15, 16, 17, 18, 19, 20. It is a -- at page 20
 8
      time in this country where that's been challenging times. And
                                                                                            of the exhibit, it is a request -- it is down here for a new
 9
      so it's my way of expressing as -- as a presenter and as an
                                                                                       9
                                                                                            academic program proposal that was submitted -- here we go.
                                                                                            Let me check that. Hold on a second. This is the wrong one.
      observer and one who had worked in the system and in the field
                                                                                     10
10
      and prepare men and women to enter the field. Particularly
                                                                                            Let me get the right page, one second. I can do it this way.
11
                                                                                      11
      when I worked at Ferris State University. I worked in the
12
                                                                                     12
                                                                                            I'm on the wrong one, one second. Let me close this out. This
      police academy there for seven years. It's a lot different
13
                                                                                     13
                                                                                            is so frustrating. Okay. There we go. There we go. Finally,
      then than it is today. And that's all I was acknowledging for
                                                                                     14
                                                                                            I see it now. Okay. Try this again, share screen. Okay.
14
      them as they do try to persevere as they work in a very -- to
                                                                                                 Q. (Continuing) So this is page 20 of the document's
15
                                                                                     15
16
      work with the community and the expectations that \operatorname{\mathsf{--}} that are
                                                                                     16
                                                                                            PDF pagination. It is a request for new academic program
      challenging to administrators and police officers.
                                                                                            development for fiscal year 2008. You were the department
17
                                                                                     17
18
          Q. Thank you. All right. Let me see if I can go to
                                                                                     18
                                                                                            chair at the time, correct, Doctor?
      Exhibit 5. What did I just do here? All right. We've got to
                                                                                                A. Yes, at Western Illinois University.
19
                                                                                      19
      take that one down and hopefully get this taken up. Okay.
                                                                                                 O. Western Illinois. And in the document, as the
20
                                                                                     20
      Showing you now what's been marked as Exhibit 5. This is from
                                                                                     21
                                                                                            chairperson of the Law Enforcement and Justice Administration,
21
      Western Indiana University -- Illinois University, excuse me,
                                                                                            you proposed a new doctoral degree program, and that is LEJA's
22
                                                                                      22
23
      2008. And it's a request for a new program that you sought.
                                                                                     23
                                                                                            Doctorate in Criminal Justice, correct?
      We're going to go to page 20. Let me get this figured out
24
                                                                                     24
                                                                                                A. Yes, sir.
      really quick, which I think I can.
                                                                                      25
                                                                                                     And what does LEJA stand for?
                                                                 29
                                                                                                                                                       30
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1 A Law Enforcement and Justice Administration 2 Q. All right. And the idea of that program was to assist criminal justice practitioners to maximize their 3 potential: is that right? 4 A. Correct. I can't read that --5 6 Well, let me -- let me --7 A. -- but if that's --Q. -- zoom in for you --8 9 -- what you're saying. Q. -- then. Let me zoom in. Hold on one second. I can 10 zoom in for you. Okay. Yeah, if you read the first 11 sentence -- can you read it from where you're sitting? 12 13 14 O. Okav. "To maximize their potential," I think that's what 15 vou're referring to. 16 Q. Yes. That's that first sentence. 17 18 A. Okav. 19 Q. Were you able to read that?

Q. Okay. Great. And so the -- again, just so -- now

that you've read it, the program was to assist criminal justice

practitioners to maximize their potential; is that right?

Yeah, I can read that.

A. Correct.

20

21

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2.5

1 justice practitioners with that goal? 2 A. Practitioners or students? 3 Q. Practitioners, I asked. A. Yes. I would say since at least 1985. Q. Let me see if I can get this one up now. 5 MR. DICELLO: Can you all see that document, I 7 hope? A I can see it, but I can't read it 8 9 Q. Well, I'll zoom in. MR. DICELLO: Can everybody in -- in TV land 10 see it? Is it -- it should --11 12 MR. L'HOMMEDIEU: Yeah, we can see that, yes. MR. DICELLO: -- it should say, "Examining the 13 liability factors," at the top. Do you see it there? What --14 what do you see on the screen? Let's just -- off the record. 15 16 (A discussion ensued off the record.) 17 Q. This is Exhibit 6. It's an article that you wrote in 18 1998 titled, "Examining the Liability Factors of Sudden 19 Wrongful Deaths in Police Custody," and that's when you were at East Carolina University, correct? 20 21

O. Okay. I'll try to get through this now. Let me do

this. This would've been for Police Quarterly, Volume 1,

Q. All right. How long have you been educating criminal

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23

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Number 4 in 1998, correct?

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Q. And at page 67 of the document, which we'll get to -and corrections officers who deal with these types of here we go. I'll zoom in. You write, "While there is no incidents. 3 absolute protection against civil lawsuits, a municipality and 3 O. And when you say, "this is the reality," what do you its police can defend their actions by knowing the legal issues 4 mean? 4 involved and by developing proactive measures to reduce the This is the -- the nature of working in the criminal 6 frequency of litigation." Do you see that? 6 justice system; the intrinsic nature of these types of A. Yes. incidents. This is a very narrow slice, narrow percentage, of 8 Do you believe that today to be true? the types of incidents officers have to respond to. So it 9 9 was -- it's an acknowledgement that that is the current state 10 of the affairs, and it's still that way today even more so. 10 O. At page 69 of this document, you write, "Each case will obviously comprise numerous variables for the plaintiff to And the article goes on to -- to assist those who 11 11 attack. In any lawsuit, not all initial allegations will 12 12 read it, practitioners, students, others, to acknowledge and to withstand judicial scrutiny. The agency should, however, be 13 13 make them aware of you can expose yourself to civil liability prepared to justify and defend each claim." Do you see that? unnecessarily. Let's -- let's work on trying to mitigate that, 14 14 15 15 but should you be sued, here's what's going to potentially 16 Q. Do you still believe that to be the case today? 16 happen based on the results, the outcome of case decisions by reviewing that article --17 A. Yes. 17 18 Q. What is the academic purpose of the statements that 18 19 I've just shown you? 19 -- for that article. 20 A. I think they're more than academic. I think 20 Q. -- is one of the purposes of your writing to reduce they're -future litigation against law enforcement? 21 21 Q. Well, I'd like to ask if you could just stay with my MR. LUTE: Objection. You may answer. 22 22 23 question. What is the academic purpose? 23 A. That may be portions of it, but it's more get -- for

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1
     assisting ways, methods, strategies to -- to respond to these
     types of agencies -- or excuse me, these types of incidents but
2
     with that agency with these officers.
```

A. It's the reality within the work of criminal justice

system, and in this case, it was talking about police officers

O. Okav.

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A. So it's -- it's an awareness. It's -- it's quidance. 5 6 It's based on the trends and patterns of case decisions.

Q. I believe the last sentence of your article reads, "Understanding the mechanics of this type of litigation in state and federal court and providing officers with continued direction in these types of encounters will assist in defending or reducing future litigation." Did I read that right?

A. Correct. So it's a two-pronged approach.

13 O. Do you still believe that understanding the mechanics of that type of litigation will assist officers and agencies in 14 defending or reducing future litigation? 15

A. Yes.

Q. Is that one of the purposes that you hold today in testifying.

A. Depending on what the nature of the lawsuit is?

Q. Well, in this lawsuit? 20

21 MR. LUTE: Objection. Go ahead.

A. Sure. Absolutely.

All right. You testify from time to time for a 23

24 501(c)(3) organization titled Americans for Effective Law

Enforcement or AELE, correct? 2.5

1

24

2 O. We have it in front of us here. I'm going to put it up on the screen for everybody else what's going to be marked as Exhibit 7. I believe it says here, "The Americans for Effective Law Enforcement is a resource center and legal educational provider dedicated to offering interested parties 7 objective, timely, accurate, legal, scientific, and evidence-based information and operational guidance for the 8 9 enhancement of the criminal justice community and to reduce potential criminal and civil liability of criminal justice 10 professionals and their employers." Did I read that right? 11

a generic, get the house in order by doing these certain things

that the Court has laid out, has identified as helpful,

A Correct

12

16

19

25

Q. Okay. And this would have -- this is from the 13 "About" page of their website. Are you familiar with this 14 15 particular mission statement of AELE prior to today?

A. I don't believe I have ever reviewed that, no.

Q. Do you agree with that mission statement as a 17 18 presenter for AELE?

You have a book that you've published. I brought a 20 21 copy. I have read every page.

22 A. Well, thank you.

And -- well, you're welcome. It's quite a feat to 23 24 write a book so large, 601 -- 606 pages, including the index.

It is Civil Liability in Criminal Justice, 8th edition, and 35

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- it's draft -- it was written or authored by you; is that right? Department of Justice" --A. Correct. 2 Q. I think there's a spot about litigious. Maybe you 2 3 O. Okav. 3 missed it. 4 MR. DICELLO: Now for the folks watching, I 4 A. You said the next sentence. don't have -- and if folks needed to know, we did not have --Oh, I'm sorry, please continue. I apologize. 6 this is for the record -- the ability to use copying devices. 6 "Of justice over the overall trends of 500,000 tort They told me they had them, but they're not working here at the cases filed in United States during fiscal years 1996 to 1997." Holiday Inn in Valdosta. But I will be citing by page and O. And the next sentence. 9 reading the pages as we need them to be read. And I'd 9 "Civil cases" ariding out -- "arising out of 75 certainly give the book to you, Doctor, to make sure I'm 10 largest counties were studied." 10 reading it accurately. All right. And so we'll -- we will Q. Okay. Can I have that back? I don't know what I'm 11 11 supplement our page references with the exhibits following this 12 12 missing here. No, the second sentence of it you -- yeah, you missed. It says, "American society has become highly litigious 13 deposition so everybody has a copy of each page that we read. 13 O. (Continuing) So easy enough, the first page, you resorting to filing civil lawsuits without hesitation." That 14 14 write, "Filing a civil lawsuit in the United States has become was the second sentence. Could you -- could you read that out 15 15 all too common since the 1970s." And I just want to hand that 16 16 loud, please? to you, make sure I read that sentence right. It's the bottom A. Okav. "American society has become highly litigious 17 17 18 page -- or bottom paragraph of the first page. 18 resulting to filing civil lawsuits without hesitation." Q. Okay. And there's no footnote to that statement, is 19 19 20 O. And that's the first sentence, correct, of that 20 there? 21 paragraph? 21 A. A. Of that paragraph. What is the source of information that you rely upon 22 22 23 Q. Yes. And the next sentence, could you read it, 23 in offering that statement in your 2003 book? 24 A. It's a general observation --24 please? "Litras and DeFrances (1999) conducted a study by the 25 2023 book, excuse me. A. -- general observation and not just criminal justice, as T know 1 1 2 in American society in general. O. Is there any other source that you rely upon in Q. And I understand, it's a general observation? 3 3 making that statement? 4 4 O. And the observation is that society has become highly
- 2
- 5
- 6 litigious, right?

7

- A. Correct.
- O And so what is the factual basis for that statement? 8
- 9 Well, I think I go through the course of the textbook
- laying down the foundation by citing numerous cases and 10
- decisions. But it's -- it's part and part of not only -- it's 11
- a general statement where if you were to go to -- and I do cite 12
- this later in Chapter 1 or 2 -- the administrative office of 13
- the courts that shows all of the litigation that's filed: 14
- 15 bankruptcy, economic, environmental, medical malpractice,
- businesses, all sorts of various occupations and disciplines 16
- that are sued. 17
- 18 O. Have you studied or compiled a listing or catalog of
- 19 all the various industries that have been sued and how
- frequently? 20

22

- 21 A. I have not.
  - O. Okav.
- 23 A. But I rely on the administration office of the court
- 24 and their annual reports that -- and I don't think they
- actually report every industry or business or occupation as far 2.5

- A. No, not that I can think of off the top of my head.
- 5 O. At page 3 of your book, we're going to go to -- all
- right. Let's go -- I've got the little orange sticky note
- right across from the paragraph. If you could, read the first
- sentence of the paragraph I'm showing you on page 3 of your 8
- 9 book.

12

- The sentence, "Criminal justice agencies and 10
- 11 personnel are also vulnerable and easy targets for litigation."
  - Okav.
- 13 A. Is that what you wanted me to read?
- Q. That's right. Do you believe that to be true today? 14
- 15 A. Yes.
- 16 Q. And upon what academic evidence or information do you
- make that statement? 17
- 18 A. Well, I cite various studies throughout the whole
- 19 book in various chapters, first of all. So the book not only
- looks at decided cases from the Supreme Court and/or lower 20
- 21 appellate court or district court level case decisions, but
- 22 also integrates a number, quite a few, research articles from
- 23 legal journals, from academic, other journals, criminal justice
- 24 journals, practitioner journals, to some extent, that all
- contribute to supporting various patterns, trends, and themes 2.5

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of each particular chapter that I write on.
                                                                                           the Annual Section 1983 Litigation Conference in Chicago for
           Q. Can you think of any publication that you've ever
                                                                                      2
                                                                                           the Institute of Technology at Chicago, as well as Nahmod, who
 2
 3
      seen or read it or relied upon that shows criminal justice
                                                                                      3
                                                                                           is the conference chair, who is a law professor there. So
 4
      agencies and personnel are vulnerable or how they've come to
                                                                                      4
                                                                                           those right off the top of my head would be examples of
      what methodology they use to establish vulnerability?
                                                                                           evidence of that based on your question.
          A. I believe the Isidore Silver's book on police civil
 6
                                                                                      6
                                                                                                Q. And when you -- when you say, as you did in your
      misconduct is one right off the top of my head that's been
                                                                                           book, that they are vulnerable, what do you mean -- what do you
 8
      around since the '70s and '60s.
 9
           Q. That's a book from the '70s?
                                                                                      9
                                                                                                A. Well, the very nature intrinsic aspect of restricting
          A. Yes. It's been written, I think, every three to four
                                                                                     10
                                                                                           people's constitutional rights makes you vulnerable to a lot of
10
                                                                                           lawsuit and litigation.
11
      vears --
                                                                                     11
          Q. And what is --
12
                                                                                     12
          A -- edition
13
                                                                                     13
                                                                                                A. So during an arrest, during a use of force, during a
           O. -- what was cited in that book as a vulnerable aspect
                                                                                           search and seizure, during a pursuit, I mean, all the various
14
                                                                                     14
      of criminal justice agencies and personnel?
                                                                                     15
                                                                                           types of duties officers perform, and then correctional
                     MR. LUTE: Objection. Go ahead.
16
                                                                                     16
                                                                                           officers within the jail and the prisons, so yeah, they --
          A. The likelihood, the trends of, patterns of -- and
                                                                                           you -- you do have -- you are vulnerable to a lawsuit.
17
                                                                                     17
18
      this is, again, all law enforcement and corrections, criminal
                                                                                     18
                                                                                                Q. I mean, isn't anyone?
      justice -- the availability, the accessibility of suing
19
                                                                                     19
                                                                                                A. Not necessarily, no.
      criminal justice practitioners. And he cites that quite
20
                                                                                     20
                                                                                                Q. No one? Wait, hold on a second. Any of us could be
      through his particular text.
                                                                                           sued for anything at any time.
21
                                                                                     21
               Also, I can recall -- I believe her name is
                                                                                                A. Correct. But I --
22
                                                                                     22
23
      Karen Blum, who is a professor of law -- and I can't remember
                                                                                     23
      what university. I believe it's on the East Coast. But she's
24
                                                                                     24
                                                                                                A. -- think the odds of me being sued versus a police
      written quite a bit. She's -- she's spoken several times at
                                                                                           officer that stops somebody on a traffic stop is much lower --
 1
      and/or yourself -- than a police officer, because again,
                                                                                      1
                                                                                                O. So it's your belief from your work on other cases
 2
      restricting people's constitutional rights.
                                                                                           that American citizens -- some, excuse me -- some American
           Q. And have you ever done a comparative analysis of any
                                                                                           citizens use the civil justice or criminal justice system to go
 3
 4
      kind in your studies of how often citizens sue each other
                                                                                           after police?
      versus how often citizens sue officers?
 5
                                                                                      5
                                                                                                A. Oh, definitely. Now, what percentage, I don't
 6
          A. No, I have not.
 7
          Q. Okay.
                                                                                      7
                                                                                                Q. Well, I have a better --
                                                                                                A. -- but -- but it does happen.
          A. Again, I would rely on the Administrative Office of
 8
                                                                                      8
 9
      the Courts, AOC, Administrative Office of the Courts, which
                                                                                      9
                                                                                                    -- yeah, I have a -- I have a more pertinent
      shows where that does happen but not with any specificity, but
                                                                                           question, which is, what's easy in the targeting that you've
10
                                                                                     10
                                                                                           seen? What is the -- how do you get to the notion of an easy
11
      I mean, they give numbers and trends and patterns and the
                                                                                     11
12
      outcomes of those lawsuits.
                                                                                     12
                                                                                           target? I understand there could be a target. Anyone could be
13
           O. You also say that criminal justice agencies and
                                                                                     13
      personnel are easy targets -- targets for litigation. What do
                                                                                                A. Well, I'm -- I'm dealing with --
14
                                                                                     14
15
      you mean by an "easy target"?
                                                                                     15
                                                                                                O. But wait, my --
          A. Meaning that they can be set up. They can respond to
                                                                                     16
                                                                                                A. -- the book --
16
      one thing and something else totally different than what the
                                                                                                Q. -- but my question is anyone could be a target of
17
                                                                                     17
      call was or what the initiating response was. I worked on a
18
                                                                                     18
                                                                                           litigation, right?
19
      case long ago where -- in Michigan -- where the individual had
                                                                                     19
                                                                                                A. It's possible.
      numerous weapons in his house and was calling the sheriff's
                                                                                                    And -- and so I'm trying to understand how an officer
                                                                                     20
```

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deputies to come to the house. And the family intervened and

said do not respond to the house because he's setting up for

I'm talking about in terms of targets and vulnerability and

accusations that may not be quite accurate.

suicide-by-cop situation. So that's generally what I'm -- what

43

for doing it?

A. Yes.

with qualified immunity, lawyers, is an easy target?

Just because they do their job, they could be sued

44

A. Because of the nature of their job.

21

22

23

24

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- Q. And is that different than any other profession you can think of? 2 3 A. I think it parallels, but I think roughly speaking 4 there is about -- this is an estimate coming out of the Silverdore [sic] book -- anywhere from 50 to 60,000 Section 1983 and/our state lawsuits annually against police 6 officers and corrections and jail officers. So, yeah, they can 8 -- they can obviously be easy targets. When you stop someone 9 on a traffic stop, there's all sorts of allegations that can  $% \left( 1\right) =\left( 1\right) \left( 1\right)$ and possibly be made against that officer; maybe some accurate, 10 maybe some inaccurate, but it can be a set up. 11 In -- in corrections, it's the same way where I've 12 13 seen that -- that occur. It certainly has occurred when I even worked in prisons many years ago. But that -- that can happen, 14 so that's a general fact. That's the -- the culture in the 15 16 world and the society we live in. O. When you say it's a general fact, what are you 17 18 referring to? What's a general --19 A. Going back to your question, easy target. 20 Q. So in -- in your mind, it's a general fact that officers who enforce the law are easy targets of litigation? 21 22 A. Can be. 23 O. It can be? 24 A. Yes.
- 2 Now, did you bring that belief into your work in this
- 3 case?

6

15

18

- 4 Α.
- You did not bring that belief into your work?
  - Δ
- Ο. It -- is it part of your work at all today?
- 9 Why is it in your book?
- 10 A. Because the book is different from me working on it and retained on a case to provide an opinion about the fact, 11
- the incidents, that occurred in the -- in the case. 12
- 13 Q. But you agreed with me earlier that you rely upon
- your book in your drafting of your opinions in this case. 14 A. In terms of how cases inform my opinion, case
- 16 decisions that either the Supreme Court has decided on or an
- appellate court or a lower court. 17
  - Q. So in your book, you only rely on the cases?
- No. I've already articulated that I use other 19
- 20 outside sources, such as research, law journals, academic
- research articles on the topic germane to the chapter. 21
- Q. What I'm trying to understand, is earlier you 22
- 23 testified that you do rely upon your book, your 8th edition,
- 24 2023 book, with respect to forming your opinions in this case.
- Do you remember that testimony?

1 A. As it was general to your question. Now, you're 2 asking me to --

And you hold that belief today?

- Q. Hold -- hold -- wait, I just want to --3
- 4 -- no, no, no, let me finish. Let me finish, sir.
- Q. -- I think we're confusing each other. Let me 5
- 6
- 7 Α. I think you're confused.
- Q. Okay. Let me hear you finish. 8
- 9 And it's in my article -- or my -- my report --
- 10
- A. -- in fact, case decisions that I have used in the 11
- book or in other articles inform my opinions. 12
- Q. That's true, yes. So if I heard you just now, you 13
- said case decisions in your book inform your decision. 14
- A. 15 Yes, they do.
- Q. Okay. Do you remember my question, which was, do you 16
- rely upon your book informing your opinions in this case? And 17
- 18 you said, "Yes." Do you remember that?
- 19 A. Yes. But --
- 20 Okay. And so now --
- 21 Ά -- but, let me -- let me qualify that.
- 22 O. Okav.
- 23 Not every page.
- 24 Q. Not every page?
- 2.5 A. No. And certainly some of the pages that you

- 1 reference for me to -- to read, those are general statements.
- But my focus in this case, in this incident, and this report is 2
- focused on the fact patterns of this incident.
  - O. Okav.

4

- 5 A. And everything, perhaps, that I have been trained and
- 6 experienced will come in to have some influence or impression
- 7 of forming my opinion.
- Q. I just want to understand. Do you still hold the 8
- 9 belief that you wrote, in 2023, that criminal justice agencies
- and personnel are also vulnerable and easy targets for 10
- litigation? Do you still hold that believe today? 11
- 12 A. For the second time, yes.
- 13
- 14 A. Or third.
- 15 O. And now I only have one other question on that. You
- 16 are not bringing that belief into this case; is that right?
- A. That's correct. 17
- 18 At page 232 of your book, the last paragraph above
- 19 the words, "Chapter Focus Questions," can you repeat -- the
- sentence that I'm directing you to begins, "Administrators 20
- should." Do you see that sentence there? 21
- 22 A. Yes.

- 23 Could you read that out loud, please.
  - "Administrators should continue to maintain the
- commitment providing and expanding regular training in order to 2.5

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```
avert future lawsuits alleging inadequate training."
 2
          Q. Do you believe that to be the truth today?
                                                                                      2
                                                                                                    "Learning from the case examples presented in the
 3
                                                                                      3
                                                                                           previous chapters and applying the components previously
 4
          Q. Do you hold that belief in your work in this case?
                                                                                           discussed - combined with risk management strategies - will
               I'm not sure if I follow your question --
                                                                                           assist in placing the agency in the best position to defend
                                                                                           against the next lawsuit." Did I read that right?
 6
          Q. Do you --
                                                                                      6
          A. -- on that.
                                                                                                A. You did.
                -- do you bring that belief in your -- into this case
                                                                                                    Do you hold that belief today?
 9
      today in your work on the report?
                                                                                      9
                                                                                                A. Yes, I do.
          A. That administrators should follow Canton in terms
                                                                                     10
                                                                                                Q. And do you bring that belief into this litigation?
10
      of --
                                                                                     11
                                                                                                    I suppose so. I mean, it's part and parcel of my
11
12
13
          A. \operatorname{\mathsf{--}} developing and providing training to their
                                                                                     13
                                                                                                Q. Okay. Now, my question is: What academic purpose do
      officers?
                                                                                           you serve from your point of view in teaching students what
14
                                                                                     14
          Q. -- that they should continue to maintain the
                                                                                           we've reviewed here at pages 3 and 232 and 311 of your book?
15
16
      commitment to providing and expanding regular training in order
                                                                                     16
                                                                                                A. To follow the law.
      to avert future lawsuits alleging inadequate training?
17
                                                                                     17
                                                                                                O. I'm sorry?
18
          A. Yes. I would agree with that.
                                                                                     18
                                                                                                A. To follow the law.
          Q. Okay. So that belief you are bringing into the case?
                                                                                     19
                                                                                                Q. That is the purpose?
19
20
                                                                                     20
                                                                                                A Correct
                                                                                                Q. And if you don't follow the law, you can get sued?
21
          O. If you could turn to page 311, there's a sentence on
                                                                                     21
      that page that reads, "Learning from the case examples
                                                                                                    You can get sued when you follow the law as well.
22
                                                                                     22
23
      presented in the previous chapters." Do you see that sentence?
                                                                                     23
                                                                                                O. Okay. So the -- so the purpose in citing how to
          A. Now I do.
                                                                                           defend against the next lawsuit or to avert future lawsuits or
24
                                                                                     24
          Q. Do you see that?
                                                                                           that they are vulnerable and easy targets of litigation, that
                                                                49
      is, law enforcement, those statements are all made to teach
                                                                                      1
                                                                                                A. It's a shield according to the United States Supreme
                                                                                      2
                                                                                           Court.
                                                                                      3
                                                                                                Q. And do you think it acts as a shield?
                                                                                      4
                                                                                                A. It can.
                                                                                      5
                                                                                                O. And so when you spoke in October of 2020 in your
                                                                  ıp
                                                                                           seminar, you were intent on teaching officers to shield
                                                                                           themselves from lawsuits, fair?
                                                                                                A To follow the law --
                                                                                      8
                                                                                      9
```

2	students to follow the law?
3	A. Correct. Or practitioners and administrators who
4	read the text.
5	MR. DICELLO: Okay. Joe, if you would call u
6	Exhibit 9.
7	MR. FOUCHÉ: One moment. Are you ready?
8	MR. DICELLO: I am.
9	Q. We're going to play this from your video of
0	October 29th, 2020.
1	MR. DICELLO: Go ahead, Joe.
2	{Playing of video started.}
3	{Playing of video stopped.}
4	Q. Okay. The part of your statement I want to direct
5	you to is, "We're trying to get qualified immunity." Do you
6	remember saying that after seeing the video?
7	A. Yes.

- 18 Q. And if I understand what you're saying here, you urge 19 criminal justice practitioners to be up to date about case law in order to avoid qualified -- or to -- rather in order to get 20 qualified immunity as a defense? 21
- 22 A. Yes.
- All right. In speaking with law enforcement over 23 24 your career, have you found qualified immunity to be something that protects officers from lawsuits? 2.5

```
Q. To follow --
A. -- in order to be awarded qualified immunity. Once
```

10 an officer or the department is outside the law, it's very hard 11 and normally would not end up in a qualified immunity decision. So, I mean, that's -- that's -- the goal of my book and my training and teaching has to be to help criminal practitioners, 14 15 from whatever rank, title, position they have, to understand the law, to follow the law, and to understand that if you have 16 these things in place -- and one way to do that is through a 18 risk management system -- is to be -- being -- following the 19 So if you do get a lawsuit, which we already have 20 21

discussed it's not difficult for that to occur, then the goal 22 is to get qualified immunity, which the Supreme Court started in 1982 with Harlow versus Fitzgerald. So the goal is you just 24 can't waltz into court and say, "Your Honor, give us qualified immunity." There's got to be a lot of steps. And that's where 2.5

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- in some cases, qualified immunity is not going to be awarded
- 2 because these measures were not in place. So that's the whole
- $\ensuremath{\mathtt{3}}$  theme and items that are presented to assist them in that
- 4 manner.
- 5 So -- and I don't want to go too far afield with
- 6 this -- but if I'm an administrator -- and I teach a lot of
- 7 administrators -- don't expect the Court to give you a
- 8 qualified immunity if you haven't put these measures in place.
- 9 Okay? Hello. So there you go.
- 10 Q. And so that we understand that the -- the foundation
- upon which you teach officers to follow the law, you're not a
- 12 lawyer, right?
- 13 A. I'm not.
- 14 Q. You've never served as a judge or any legal officer
- 15 before, right?

16

- A. No, I'm not.
- 17 O. Okay.
- 18 A. Or have not.
- 19 Q. And so you, if I understand, compile, read, and
- 20 present case law as written in judicial opinions to law
- 21 enforcement, right?
- 22 A. Correct.
- 23 Q. And you help them understand those decisions, right?
- 24 A. We try.
- 25 Q. That's your goal?

- 1 N That's the goa
- Q. It's been your career's work?
- 3 A. Ye

6

11

- 4 Q. And your goal in that respect is to help them secure
- 5 qualified immunity by following the case law?
  - A. Correct.
- Q. Okay. Now, an article in 2000 that you wrote will be
- 8 our next exhibit. And this is October -- I'm sorry, this is
- 9 "Emerging Trends in Police Failure to Train Liability." Let me
- 10 get it up for the folks here.
  - MR. LUTE: What's that number?
- 12 MR. DICELLO: It's Exhibit 10.
- 13 MR. LUTE: Ten?
- 0. (Continuing) Okay. Zoom in trying to find the spot.
- 15 Well, last sentence of I think the first paragraph of page 172
- of this article says, "What appears to be clear is that the
- 17 police have been and continue to be targets of litigation."
- 18 Did I read that correct?
- 19 A. Correct.
- 20 Q. And again, in your -- in this article, you don't cite
- 21 any source for that statement, do you?
- 22 A. Other than if you read the whole article it refers
- 23 back to case decisions.
- Q. And so when cases are filed and read by you, you have
- 25 concluded by doing that and presenting those cases in articles
- 3
- 1  $\,\,$  to law enforcement and to others, that police have been and
  - continue to be targets of litigation; is that right?
- 3 A. Correct.
- 4 Q. All right. Let's go to an article that you wrote in
- 5 2011. This -- or it's 2006 -- this is Exhibit 11. And this
- 6 document is titled, "A Risk Management Analysis of the Claims,
- 7 Litigation and Losses of Michigan Law Enforcement Agencies:
- 8 1985-1999." And it was co-authored with Madhava,
- 9 M-A-D-H-A-V-A, R. Bodapati, B-O-D-A-P-A-T-I. Do you see the
- 10 article?

12

17

2

- 11 A. Yes.
  - Q. Do you recognize it?
- 13 A. Yes
- 14 Q. And this is while you were with the Department of
- 15 Criminal Justice at East Carolina University in Greenville,
- 16 North Carolina, correct?
  - A. Yes.
- 18 Q. Let me go up here. Okay. From page 54 of that
- 19 article, you write, "Providing ongoing training in these
- 20 categories may place the organization in a better position to
- 21 defend a failure to train claim." Do you see that?
- 22 A. Yes.
- 23 Q. This appears to be the same sentence written in your
- $\,$  24  $\,$  book, and I just wanted to make this clear. Did you create
- 25 your book from the journal article and -- of 2006 and the

- 1 others that you've written?
- 2 MR. LUTE: Objection. Go ahead.
- 3 A. I'm not -- I'm not sure if I understand your
- 4 question.
- 5 Q. Did you use the articles as the -- at times as the
- 6 body of the book?
- 7 A. Maybe as a basis from springboarding into a
- 8 particular chapter, if I'm understanding your -- your question
- 9 correctly.
- 10 Q. You are. You are. Gosh almighty, this is so
- 11 frustrating. I'm sorry for the delays here. Goodness
- 12 gracious. Hold on. All right. Let's do that. Okay. You
- 13 also write, "Providing ongoing training in these categories may
- 14 place the organization in a better position to defend a failure
- 15 to train claim."
- 16 And you also say, "Ongoing training" -- let me see if
- 17 I find it down the article. There it is at page 55. "Ongoing
- 18 training will increase officer confidence and competence, and
- 19 place the officer and the department in the best position for
- $20\,$   $\,$  justifying and defending a level of force when faced with a
- 21 legal claim of excessive force." Did I read that right?
  - A. Correct.

22

- 23 Q. Is there -- is there a -- it's interesting. You --
- 24 you don't note that article ongoing training will increase
- 25 officer confidence and competence and place the community in a

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safer position relative to the officer. Why is that? Why are
                                                                                           last year, 2023. It's part two of a two part video from AELE.
      you focused here on, instead, defending a level of force when
                                                                                      2
                                                                                           {Playing of video started.}
 3
      faced with a legal claim?
                                                                                      3
                                                                                           {Playing of video stopped.}
          A. Because that's the nature of the book. That's the
                                                                                      4
                                                                                                O. And after reviewing the video marked as Exhibit 13,
 4
      nature of the trends and the patterns of the case decisions I
                                                                                           do you now recall saying those remarks at the close of your
 6
      referenced and researched.
                                                                                      6
                                                                                           presentation?
                     MR. DICELLO: Joe, if you would call up
                                                                                                A. Yes.
 8
      Exhibit 12, it's going to be --
                                                                                                    Do you still hold those statements to be true today?
 9
                     MR. FOUCHÉ: One moment.
                                                                                      9
                     MR. DICELLO: -- video of October 29th, 2020,
                                                                                     10
                                                                                                O. Let me show you what's been marked as Exhibit 14, and
10
      again?
                                                                                           this is from the RAND Research Institute, "How Gun Policies
11
                                                                                     11
                                                                                           Affect Police Shootings." I noticed you cite no publication
12
                     MR. FOUCHÉ: Okay. Are you ready?
13
                     MR. DICELLO: Uh-huh (positive response).
                                                                                     13
                                                                                           from RAND in any of your work; is that fair?
      {Playing of video started.}
                                                                                                           MR. LUTE: Objection. You may answer if you
14
                                                                                     14
15
      {Playing of video stopped.}
                                                                                     15
16
          Q. Do you recall -- after seeing the video marked
                                                                                     16
                                                                                                A. I'd have to go back and look. I don't know that to
      Exhibit 12, that snippet, do you recall saying that back in
                                                                                           be accurate or true without researching, but....
17
                                                                                     17
18
                                                                                     18
                                                                                                Q. At page 1 to 2 -- well, looking at -- at the -- at
                                                                                           the statements, this is updated January 10th of 2023, it says,
19
                                                                                     19
20
          Q. And do you believe that to be true today, what was
                                                                                     20
                                                                                           "Although the Federal Bureau of Investigation has tried to
      said in the video?
                                                                                           collect information on police shootings from about 17,000 local
21
                                                                                     21
22
                                                                                     22
                                                                                           law enforcement agencies, recent efforts by news organizations
23
                     MR. DICELLO: Joe, if you would, go to
                                                                                     23
                                                                                            (such as The Washington Post and The Guardian) have
                                                                                           demonstrated that the FBI's data collection efforts miss many
24
      Exhibit 13.
                                                                                     24
          O. This is a video from an AELE seminar that you gave
                                                                                           such cases." You're familiar with this?
 1
          A. Oh, ves.
                                                                                      1
                                                                                           of force or officer-involved shootings.
 2
                                                                                      2
                                                                                                    But the Bureau of Justice Statistics, when you look
          O. Yeah. You're familiar with that -- that fact or that
                                                                                           at use of force, has chronicled that the use of force and the
 3
      observation?
                                                                                      3
                                                                                           estimates of use of force since 1996 occurred till the day, and
 4
          A. Well, with that observation.
                                                                                      4
          Q. That observation. And -- and you've spoken about
                                                                                           it's about 1.8 percent of all officer contacts. And now this
 5
                                                                                      5
 6
      that specifically, that The Washington Post and other sources
                                                                                           has threatened or actually used use of force, excluding deadly
 7
      have -- are not necessarily reliable sources of information
                                                                                           force.
      for --
                                                                                                O And there's another source, it's the National Violent
 8
                                                                                      8
 9
          A. That's correct.
                                                                                      9
                                                                                           Death Reporting System, NVDRS. Are you familiar with that?
10
          Q. -- for these numbers?
                                                                                     10
                                                                                                A. Yes, I am.
          A. That's correct. There are no reliable numbers on
                                                                                                Q. Yeah. And at the bottom of this article, it says,
11
                                                                                     11
12
                                                                                     12
                                                                                           "Similarly, states whose violent death data are available
      that topic.
          Q. Right. Which is an interesting thing to say and
                                                                                           through the National Violent Death Reporting System have, on
13
                                                                                     13
      admit to and observe. It's something you do quite a bit.
                                                                                           average, roughly twice as many police shootings counted in the
14
                                                                                     14
      There isn't reliable data on shootings out there.
                                                                                           system as appear in the FBI's supplemental homicide data or the
15
                                                                                     15
          A. That's right.
                                                                                     16
                                                                                           CDC's vital statistics record." And then it cites Barber, et
16
          Q. And so any statement you've ever made about them
                                                                                           al., 2016. Did I read that right?
17
                                                                                     17
18
      being targets for using force could not include the data that
                                                                                     18
                                                                                                A. Correct.
19
      is not reliable, right?
                                                                                     19
                                                                                                Q. So the notion that accurate reporting of
          A. I've used the estimated data and cautioned -- like
                                                                                           officer-involved shootings -- the notion that the reporting is
20
                                                                                     20
```

21

22

24

2.5

any research, you have to caution folks with limitations of any

study. And there are limitations with the data that has come

out on officer-involved shootings over the year -- years. The

FBI used to track officer-involved shootings, but the problem

there was not every agency contributed or submitted data on use

59

accurate is hotly contested; would you agree?

You've said in prior speaking and -- and

presentations that you triangulate data on the shootings to

come to the conclusion that there's not many shootings that

A. Oh, yeah, absolutely.

21

22

23

2.4

2.5

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```
happen; is that right?
                                                                                                   What term do you use? I may be missing -- I'm trying
 2
          A. When you say, "many"?
                                                                                     2
                                                                                          to get to the --
 3
          O. I think you've said in the past that the incidence of
                                                                                     3
                                                                                               A. Either --
 4
      violence by police officers is virtually nonexistent.
                                                                                     4
                                                                                               O. -- sum and substance of the issue.
              I didn't say that.
                                                                                                    -- whatever the case may be, whether it's use of
 6
          O. You sure?
                                                                                     6
                                                                                          force or excessive force.
          A. You'd have to show me the -- the piece on
                                                                                               O. Use of force.
 8
      nonexistent.
                                                                                                   Yeah. It could be deadly force or nondeadly force.
 9
          O. Well.
                                                                                     9
                                                                                          I don't use the term "police violence."
          A. And when you say police --
                                                                                    10
                                                                                               O. And why not?
10
               .001 percent, do you remember --
                                                                                               A. Because I don't believe in that.
11
                                                                                    11
          Ω
              Yeah, it's less than 1 percent.
12
                                                                                    12
                                                                                               A. I just don't because the -- there's -- what evidence
13
          Q. Okay. Less than 1 percent?
                                                                                    13
                                                                                          does it show that our police are violent? Show me the
          A.
              Right. And when --
14
                                                                                    14
          Q. And --
15
                                                                                    15
                                                                                          evidence.
16
          A. -- you say -- let me --
                                                                                    16
                                                                                               Q. Well, how about the conviction of Derek Chauvin?
                                                                                               A. That's a conviction of -- but it -- of a criminal
17
          O. Please.
                                                                                    17
18
          A. -- yeah, I need to clarify. When you say, "police
                                                                                    18
                                                                                          case. It doesn't say anything about police violence. I don't
      violence," explain that.
                                                                                          equate that with police violence.
19
                                                                                    19
          Q. It would be claims of excessive force, police
20
                                                                                    20
                                                                                               Q. You do not equate the conviction of Derek Chauvin for
      shootings, the items that you actually talk about in your
                                                                                          killing George Floyd as police violence?
21
                                                                                    21
      October 29, 2020, lecture that speak to in custody, as well as
                                                                                               A. No, I do not.
22
                                                                                    22
23
      other sources -- I think you say -- of police violence.
                                                                                    23
                                                                                                         MR. LUTE: Objection. Go ahead.
        A. You think I do. Could you show me where I say
                                                                                               Q. What do you -- what do you equate it with --
24
                                                                                    24
      "police violence," because I don't use that term?
                                                                                                   With the use of excessive force.
 1
          O. And excessive force is not violence?
                                                                                     1
 2
          A. No, not in my -- not -- not anything I've ever read
                                                                                     2
                                                                                          of --
      or studied or examined or ever testified to or trained to or
                                                                                     3
                                                                                                          THE WITNESS: Yeah, I'd take a break now.
 3
      anything. That's the society's culture that we're in that have
 4
                                                                                     4
                                                                                                         MR. LUTE: Can we take a break?
      equated from police misconduct, if you will, or excessive force
                                                                                     5
 5
```

to now, and it used to be police brutality. Now it's police 7 violence, which I -- I don't ascribe to that. Q. Okay. Thank you. And now I see our confusion on 8 9 the -- on the numbers, because I used a term that you don't 10 11 A. I don't, no. No, I don't use that. Now, if we 12 have -- if it's a bona fide incident, and that's the thing about newspapers. Sometimes those are very inaccurate. So --13 so the problem --14 15 O. I believe --16 A. -- with this is looking at the data, because the data has estimates and the data has limitations and is inaccurate 17 18 depending on who's reporting it. And that's the problem we 19 have. I've long called for a better system of reporting. I'm

solely for that, to get the true, accurate data and try to give

society and culture and our republic a better viewpoint of what

A. Exactly. We have some. It's limited, but it has

does actually happen in confrontations.

O. Because right now we have no idea.

21

22

23

24

2.5

limitations.

MR. LUTE: How are you doing, Doctor, in terms MR. DICELLO: That's sounds fine, yeah. (A recess was taken at 1:15 p.m. and deposition 7 resumed at 1:36 p.m.) 8 (Ms. Ziarko joined the Zoom meeting.) 9 MR. DICELLO: Back on the record, just -- the court reporter brought something to my attention that I want to 10 clarify. For those of you keeping score as terms of the 11 12 exhibit listing, Exhibit 8 is Dr. Ross's book, "Civil Liability in Criminal Justice," and that's published 2023. And as I 13 indicated, apparently it wasn't clear, the pages that we took 14 from that book were page 1, 3, 232, and 311. Those will be 15 16 part of Exhibit 8. So if that was confusing, I do apologize. 17 Q. All right. Now we're going to turn to your 18 background experience, education, knowledge, and training over 19 your career. Okay? 20 21 Q. You're not and have never been employed as a police 22 officer?

Q. And this might sound redundant, but just to be clear,

25 in no capacity have you ever stepped out of a police car to

A. That's correct.

23

2.4

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1

- investigate the source of random or celebratory gunfire as a police officer, correct? 3 A. Correct. 4 O. You've never been involved in an officer-involved shooting, correct? 6 A. Correct. O. You've never investigated an officer-involved 8 shooting as a member of any government agency? 9 A. Correct. O. But you've done so as an expert? 10 "Done so"? 11 Ά That is, investigated an officer-involved shooting 12 13 for the purpose of being retained as an expert? A. 14 Yes. 15 O. Okav. You've never been a supervisor of any police 16 agency, correct? 17 Α. Correct. 18 Q. And you've never been educated trained or experienced 19 20 A. That's correct. 21 O. Or as a medical professional? 22 23 O. A neuroscientist? 24 A. Correct. Cognitive scientist?
- risk management issues which you cited as an article, risk
  management comparisons out of Michigan, that is a scientific
  methodology and a scientific paper or article published by a
  peer-reviewed journal article on that data. So that's how I
  look at it and others.

Nor medical professional or scientific researcher?

A. Scientific researcher, I would beg to differ with

And when you think of yourself as a scientific

from a scientific perspective, using quantitative methods,

methodology, and statistical analysis to analyze various

outcomes in terms of particular use of force and areas of

in-custody deaths, I would say primarily. And then using the

qualitative method to examine, which is part of the science of

discipline, qualitative methods of examining case law, case

decisions, trends, patterns, that type of thing. And -- and

A. Looking at various issues dealing in and around force

that, but not a medical researcher.

researcher, help me understand what you mean.

Q. With respect to that article, what was the
methodology that you employed that would be scientific?

A. We were access -- we were gained access -- we were
provided access by the MMRMA, Michigan Municipal Risk
Management Authority, of their losses and claims over the
period of time. And we looked at a longitudinal -- looked at

65

```
1
      the data from a longitudinal perspective, as well as a time
      series perspective, as well as doing a statistical analysis of
 2
      the outcome and trends and patterns of that -- those lost
 3
 4
      claims.
 5
                     MR. DICELLO: Could you repeat back his answer,
 6
 7
                     COURT REPORTER: Just one moment.
                     MR. DICELLO: Putting you to work now.
 8
 9
                     COURT REPORTER: I know. Let me make sure I
      got it all because some of it didn't transcribe correctly.
10
11
      Hang on.
12
                     MR. DICELLO: Okay. Take your time.
                (The record was read by the court reporter.)
13
                     MR. DICELLO: Thank you.
14
15
          O. What statistical analysis did you undertake regarding
16
      those claims?
           A. I'd have to go back and look specifically, but I want
17
18
      to -- it was correlational, and I don't remember if we used
19
      Pearson's or logic regression. I'd have to look at the
      article.
20
21
          Q. And as a subject of research, why were the MMRA's
22
      losses and claims interesting to you?
           A. Because the -- first of all, I -- I have known
23
```

various of the senior risk managers. In fact, I used to work

with one at the prison when he left the prison and he came to

24

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2
      that you're the risk manager and you -- one of the risk
      managers for that company -- and I've never seen a report as it
 4
      results or as it refers to the agencies where they provide
      insurance
 6
                So we got to talking about that, and I said we'd be
 7
      glad to do an analysis for you as a risk manager who is deep
      into insuring agencies. And so we were provided a contract
 8
 9
      with them to analyze their loss and their claims to get an idea
      of -- so they could get an idea of how their sheriff's
10
      departments, police departments, correctional departments were
11
12
      faring with loss in claims due to, vis-à-vis civil -- civil
      liability and litigation within their entities. It was like 83
13
      out of 85 counties, as I recall, and almost 3,000 loss claim
14
15
      rulings.
16
           Q. And do you remember the name of the senior risk
17
      manager for MMRA that you were talking about?
18
           A. MMRMA, it was Bill Page at that time, and I think
19
      he's since retired.
               And again, the initials are MM --
20
21
           A. MMRMA, Michigan Municipal Risk Management Authority.
22
           O. Have you done any work for any other risk management
      authorities or like-styled entities?
23
24
           A. Not that I can recall. When you say, "work,"
25
      research for them, or --
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work for them. And we were talking at a conference one year

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- 1 Q. Yeah, any work at all.
- 2 A. -- any -- I have done work -- brought in -- was
- 3 brought in to the State of Mississippi several times to provide
- 4 training for the Chiefs of Police Association, and I believe
- 5 they were part of funding that training on two occasions as  ${\tt I}$
- 6 recall.
- 7 O. Who was part of funding?
- 8 A. The risk managers for -- and I don't remember their
- 9 acronym or their -- but it was for the State of Mississippi.
- 10 Q. So you had you -- you conducted training funded by
- 11 risk managers for the State of Mississippi?
- 12 A. Yes, yes, sir.
- 13 Q. Any other risk manager or insurance companies that
- 14 deal with law enforcement that you've worked for?
- 15 A. No. That'd be it.
- 16 Q. Okay. So your scientific research then you said was
- 17 quantitative -- dealt with force from a quantitative
- 18 perspective?
- 19 A. Both. I've done quantitative and qualitative.
- 20 Q. And I recognize that you said both, but I'm going to
- 21 just focus on this quantitative piece.
- 22 A. Sure.
- 23 Q. What do you mean by saying that, that you've dealt
- 24 with force from a quantitative perspective?
- 25 A. I've looked at incidents and analyzed the data over

- 1 longitudinal period of time, at least in -- in most of the
- 2 research I've done is at least a year, perhaps a little bit
- 3 more or a little bit less, collected the data, analyzed it
- 4 through a statistical procedure.
  - Q. What is a longitudinal analysis?
  - A. Usually, it's -- it's several months or a year or
- 7 more.

6

- 8 O. What --
- 9 A. Multiple years.
- 10 Q. -- that you do what?
- 11 A. That you collect data and analyze it. So like with
- 12 MMRMA, it was, as I recall, over 10 or 15 years. In the
- 13 research realm, that's called a longitudinal assessment. It's
- 14 not just taking a snapshot of a month or two, but it's
- 15 longitudinal. It's over a period of years. A time series
- 16 would be a chunk. So you'd take 20 years and you break it down
- 17 into blocks of 5 years to assess trends and patterns and common
- 18 outcomes
- 19 Q. My understanding of longitudinal analysis is that a
- 20 research subject or subjects are studied over a period of time.
- 21 A. That's correct. Usually several -- many months it
- 22 can -- usually over a year or more.
- 23 Q. What research subjects in the MMRMA work were studied
- 24 over a period of time?
- 25 A. It wasn't subjects. It was the lost claims, the

- claims that they had generated in the -- in their offices. And
- 2 we looked at those claims over that period of time, not a
- 3 subject or a person.
  - Q. Got it. So you were looking at the financial claims?
- $\bf 5$   $\,$   $\,$  A. Yes. On a particular topic that dealt with insurance
- 6 provided for law enforcement.
- 7 Q. That helps that helps clarify everything, thank
- 8 you.

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- 9 A. You're welcome.
- 10 Q. Are you trained as a statistician?
- 11 A. I have been, yes.
  - Q. What training have you received as a statistician?
- 13  $\,$  A. Well, six, seven courses that I took in my education,
- 14 undergrad, masters, and Ph.D. program.
- 15 Q. All at the University of Michigan State?
- 16 A. At Michigan State University.
- 17 Q. All right. So thank you for clarifying the idea of
- 18 scientific researcher. And in the context that we've just
- 19 talked about, that is what you meant when you identified
- 20 yourself as a scientific researcher?
- 21 A. Yes.
  - Q. Okay. You have not graduated from any law school?
- 23 A. That's correct.
- ${\tt Q.}~{\tt You}$  have never taken any law school courses; is that
- 25 right?

- 1 A. At a law school?
  - Q. Yes.
- 3 A. No
- 4 Q. Any other place?
- 5 A. Oh, yes. Through my education at Michigan State
- 6 University and continuing education all throughout my career
- 7 with various attorneys over the past, goodness, 30, 35,
- 8 40 years plus.
- 9 Q. I think we're having a definitional issue here. When
- 10 I say, "law school courses," I mean courses taught at law
- 11 schools.
- 12 A. Yeah, I've never -- I -- I have -- you mean, being a
- 13 student at a law school to take a class?
- 14 Q. Or -- or opted into a class to take one as a guest or
- 15 some other --

- 16 A. Not at a law -- no, but I've taken training provided
- 17 at law schools, conference training, seminars, but not as a
- 18 student in a law school.
- 19 Q. What kind of seminars have informed your knowledge of
- 20 the law? What is --
  - A. Section 1983 litigation, federal constitutional law.
- 22 Q. Do you remember who provided those seminars?
- 23 A. Yes, some. I mean, I'm going back now when I was
- 24 with the Department of Corrections and when I was at
- 25 Ferris State University and when I was with Pressure Point

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- Control Tactics out of Waterloo, Illinois, various conferences
- 2 I -- I have been through throughout the years. So I can give
- 3 you Michael Brave, who was an attorney. I can give
- 4 Laura Scarry, which is an attorney. Just recently, in January,
- 5 in the past several years -- his name is escaping me -- Jeb
- 6 Brown has been an attorney that I've gone through his courses.
- 7 Rodney Hill is another one. I'll stop at these four or five
- 8 off the top of my head. There's been many others.
- 9 Q. So the gist is -- and that's what I'm trying to get
- 10 to -- lawyers have presented conferences and you've attended
- 11 those conferences and learned from those lawyers.
- 12 A. Yes.
- 13 Q. Okay. Any other law school courses that you've
- 14 taken?
- 15 A. Not law school courses but a -- I think I referred to
- 16 this -- or discussed this previously with Law Professor Nahmod
- 17 at the Illinois -- at the Chicago Institute of Technology and
- 18 their law program that they put a seminar every year on
- 19 Section 1983. I've been to that several times, as well as
- 20 early days AELE, back in the '80s and '90s, before I was ever a
- 21 presenter for them, I attended numerous of their seminars which
- 22 were all by current and/or retired judges and/or current
- 23 attorneys at the time on the topic of that seminar.
- ${\tt 24}$   $\,$  Q. Okay. Any other law school or legal training as you
- 25 can recall right now?

- 1 A. No
- Q. But you have been a corrections officer?
- 3 A. That's true.
- Q. And that was from 1973 --
- 5 A. Three

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11

- Q. -- to '85?
- 7 A. Well, I worked for the Department of Corrections
- 8 during that time. I was an officer from '73 to about '78, '79,
- 9 and then I became a resident unit manager of a psychiatric cell
- 10 block of 500 mentally ill prisoners.
  - Q. And did you carry a firearm?
- 12 A. When I was a corrections officer, I -- I did on the
- 13 post and during escort and transport of prisoners.
- 14 O. Did you ever use it?
- 15 A. No
- 16 Q. All right. Let's go to Exhibit 15. Yeah, there it
- 17 is. Oh, boy, I can't see it here. Let me stop the share.
- 18 Here we go. All right. You left state service at
- 19 Western Illinois University on July 1st, 2010, to take a
- 20 position at Valdosta State University, where you currently
- 21 work, correct?
- 22 A. Correct
- 23 Q. In January -- in the January 26th, 2010, edition of
- 24 The McDonough -- spelled M-C-D-O-N-O-U-G-H -- County Voice --
- 25 The Voice newspaper, a letter to the editor was written by you,

- 1 correct?
- 2 A. Yes.
- 3 Q. The letter was titled, "Law Enforcement Professor
- 4 Says Poncin" -- P-O-N-C-I-N -- "Has Judicial Qualities,"
- 5 correct.
- 6 A. Where are you reading from? I can't see it on that
- 7 page.
- 8 Q. I'm not reading. I'm asking you if you --
- 9 A. Oh, okay.
- 10 Q. -- if you remember the --
- 11 A. I remember it.
- 12 Q. Okay. And -- and so that's correct?
- 13 A. That's correct.
- 14 Q. The letter included references to your background as
- 15 a criminal justice professor and William Poncin's experience as
- 16 a state's attorney?

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- A. That's correct.
- 18 Q. The letter concluded that you would encourage the
- 19 public to vote for Mr. Bill Poncin for Ninth Judicial Circuit
- 20 Court Judge in McDonough County, correct?
- 21 A. That's correct.
  - Q. The article was signed Dr. Darrell Ross, Professor
- 23 and Director School of Law Enforcement and Justice
- 24 Administration, correct?
- 25 A. That's correct, but it was not my signature. But

- 1 that's correct.
- Q. You were -- tell me more about that. I don't
- 3 understand the need -- what's the -- what's the reason for
- 4 offering that?
- 5 A. Because I didn't sign that that way.
- 6 Q. What does that mean for you?
  - A. I did not sign -- to me, it means that I didn't sign
- 8 that -- that document in that way. Mr. Poncin did.
- 9 Q. Okay. Is there anything about Mr. Poncin signing it
- 10 that you believe bears on the Governor's Office of Executive
- 11 Inspector General's investigation into the matter?
- 12 A. Yes, it does.
- 13 Q. And what's that?
- 14 A. Because I -- I did admit that I wrote the letter on
- 15 his behalf -- at his behalf, and I meant to give it to him
- 16 personally when he was not in the office. And so I used the
- 17 email and sent him the university's email and that's what led
- 18 to that particular -- so what I was doing was giving a letter
- 19 of reference, a recommendation, for one of my faculty who was
- 20 running for judge.
- 21 Q. Right. The signature that he made was representing

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- 22 your signature? That was the intention?
- 23 A. Yes

- Q. Did you authorize that?
- 25 A. I did not.

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- 1 Q. Did you report that to the office?
- 2 A. I believe I did. Whether they heard it or not is --
- 3 fell on deaf ears.
- 4 Q. Do you maintain that he fraudulently --
- 5 A. I didn't say "fraudulently," but I didn't sign it
- 6 that way knowing that perhaps someone might allege an
- 7 impropriety on my part.
- 8 Q. So you would've never signed it that way is what
- 9 you're saying?
- 10 A. That's correct.
  - Q. You issued a public response concerning the matter,
- 12 though?

11

- 13 A. That's correct.
- 0. You never mentioned anything of that sort in the --
- 15 A. Not that I recall, no, based on my advice of an
- 16 attorney that I....
- 17 Q. The State Officials and Employees Ethics Act of
- 18 Illinois prohibits state employees from intentionally
- 19 misappropriating state resources by engaging in prohibited
- 20 political activity for the benefit of any campaign for elective
- 21 office, correct?
- 22 A. Correct
- 23 Q. You were found to have violated the Ethics Act by
- 24 using your university email account to send a letter to the
- 25 editor soliciting votes on behalf of Mr. Poncin's campaign for
  - 7

- 1 circuit court judge, correct?
- 2 A. Actually, I sent it to Mr. Poncin, not to the
- 3 newspaper, and he forwarded it. And I said I did use the
- 4 university's email system to send it to him because he was not
- 5 in the office on that particular day.
  - Q. And you were found to have violated the Ethics Act
- 7 that were --

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- 8 A. That's true. And he won judgeship by the way.
- 9 Q. He was one of your --
- 10 A. Faculty.
  - Q. -- faculty members at the time?
- 12 A. Yes
- 13 O. He's a former state's attorney?
- 14 A. Correct. I had 40 faculty and I had 10 that were
- 15 attorneys, and he was one of the attorneys that taught in the
- 16 program.
- 17 O. Do you remember earlier I asked you if you had been
- 18 in -- let me make sure my words are clear -- I'm tired -- a
- 19 proponent of criminal justice practitioners. Remember me
- 20 saying that -- asking you about that?
- 21 A. Yes, that line of questioning.
- 22 Q. All right. Would you consider your letter on behalf

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- 23 of the former state's attorney and teacher at your school who
- 24 you supervised to be advocacy for or promotion of him?
- 25 A. I'd say it was a recommendation for him.
- 1  $\,$  Q. Okay. And so from 1973 to '85, you worked in the
- 2 Michigan Department of Corrections, correct?
- 3 A. Correct.
- 4 Q. I'm going to go back in time. We're going to have
- 5 some fun. I'm going to show you an article from 1973 from
- 6 the -- from the riot that took place. Do you remember that
- 7 riot?
- 8 A. Which one?
- 9 Q. The riot that involved a small group of inmates who
- 11 two weeks after you became a  $\operatorname{--}$
- 12 A. I recall the incident. I don't know if I recall an
- 13 article, but we'll see.
- Q. And -- and so let me -- let's be clear, this record
- 15  $\,$  is not good. You became a corrections officer in 1973 in
- 16 August?
- 17 A. Correct. Actually, I think it was July.
- 18 Q. July. And shortly after becoming a corrections
- 19 officer, there was a riot --
- 20 A. Correct.
- 21 Q. -- that occurred --
- 22 A. About two weeks after -- on the job.
- 23 Q. -- and that occurred at what prison?
- 24 A. State prison, Southern Michigan, Jackson, Michigan.
- 25 O. I believe you've said on many occasions that that was

1 two weeks after you started.

A. That's correct.

- 3 Q. And so the riot occurs on August 31st, 1971. Does
- 4 that help you understand when you started work?
- 5 A. The riot was in '71?
- 6 Q. I'm sorry, August 31st, 1973.
- 7 A. '73, yeah, I was -- as I recall, I started in July of
- 8 '73.

- 9 Q. Okay. Let's see if we can call up this article,
- 10 "Jackson Prison Riot Quelled by Tear Gas." Do you see that?
- 11 A. Correct.
- 12 Q. This is The Times Herald, Port Huron, Michigan,
- 13 Friday, August 31st, 1973. Do you see that?
- 14 A. Correct.
- 15 Q. You recognize the building?
- 16 A. Not the way you've got it portrayed. It's all black
- 17 and white but similar. It looks like the prison yard.
- 18 Q. Below the picture, "An estimated 125 Southern
- 19 Michigan Prison inmates occupied a portion of the prison yard
- $20\,$   $\,$  Thursday afternoon before tear gas forced them to return to
- 21 their cells." Did I read that right?
- 22 A. Correct.
- 23 Q. "The disturbance started in a license plate shop in a
- 24 dispute over wages" -- or it says, "wage," right?
- 25 A. Correct.

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- Q. Is that -- does that refresh your recollection as to You indicated: "Things will be quite tense for a what occurred in the riot? 2 while. This small group of men hurt all the residents here, 2 3 A. Yes. But I believe it was over other things than 3 and most of those who went back to their cells in the beginning 4 just dispute about wage, but nevertheless. will be mad, " correct? O. The second paragraph of the article says, "The 6 disruption at Southern Michigan Prison here began at 7:30 a.m. 6 Q. But there was no physical contact made between prison Thursday when a small group of inmates staged a work stoppage official -- officers and inmates was there? A. I don't recall. I -- I don't. I didn't have any in a license plate plant. The action gathered support from 9 some of the 2,400 inmates at the prison, with as many as 1689 contact with any other than later when I was assigned in the actually resisting pleas by officials to return to their segregation unit to process inmates into segregation. 10 10 cells." Do you remember that? Do you remember those facts? 11 Q. And all the injuries were from tear gas? 11 A. Yeah. They -- they rioted and actually they had --A. As far as I recall, yeah. 12 12 it did start, I believe, in the factory and then it spread into 13 13 Q. The riot happened after the movie, Deliverance, came the dining hall area and then into the yard. out, correct? 14 14 Q. It goes on to say, "Guards began lobbying tear gas A. Most likely. I think Deliverance came out in '70 or 15 15 cannisters." Do you remember that? 16 16 '71, as I recall. A. I do. MR. DICELLO: Joe, if you could, call up 17 17 18 Q. Dale Foltz, do you know who he is? 18 page -- or Exhibit 17. MR. FOUCHÉ: Exhibit 17 is not visible on my 19 19 20 Q. He was the acting prison warden, correct? 20 end. nor is 18 21 MR. DICELLO: All right. Refresh your -- your 21 A. Correct. He said, "In the end, just 25 inmates remained and screen or your -- let's go off the record so we get this 22 22 23 guards 'continued to lob tear gas until they were put in 23 technical issue taken care of. detention cells, " correct? 24 24 (A discussion ensued off the record.) A. Correct. Doctor, do you recall being interviewed for an award 81 Exhibit 17 1 at Michigan State University? 1 2 A. Yes. 2 MR. LUTE: I think that was 17. In 2013? MR. DICELLO: I'm sorry, that was 17. Thank 3 3 4 A. Correct. 4 you. Let's do 18, sorry. Q. This is from 2023, ten years later. There's a video 5 O. Okav. We're going to play a snippet --5 6 The Hall of Fame award by the School of Criminal that we're going to show you. This was an AELE presentation. 7 Justice at Michigan State. 7 It's part one of a force seminar that you gave last year. O. That's right. You're a Hall of Fame inductee. MR. DICELLO: Joe, go ahead and play it. 8 8
- 9 Α. That's correct.
- Q. Congratulations. 10
- A. Thank you. 11
- 12
  - Q. During that interview on video, you said the
- 13
- 14 MR. DICELLO: Let's play the tape, Joe. Can't
- 15 hear anything, Joe.
- 16 {Playing of video started.}
- {Playing of video stopped.} 17
- Q. Do you recall saying that now after reviewing the 18
- 19 video?
- 20
- 21 Q. Was that your motivation to actually become an
- 22 academic? The movie, Deliverance?
- 23
- 24 Q. Okay. Let me try --
- 25 MR. DICELLO: Joe, if you would pull up

- 9 {Playing of video started.}
- {Playing of video stopped.} 10
- Q. In 2023, in Las Vegas at an AELE seminar. You 11
- 12 repeated the Deliverance story, correct?
- 13

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- Q. Was it -- again, I'll ask the reason why you decided
- 15 to promote yourself and make a career of academia and
- 16 specifically criminal justice academia?
- 17 A. Not academia, no. It was to further myself in
- 18 education so I could promote myself. And it was based on the
  - disturbance, the riot that occurred, and knowing that at the
- time, the way to advance yourself there was a push on 20
- education, which came out of the '60s through the riots and 21
- 22 early '70s when President Nixon was in office and they started

the federal funding called the LEAP Fund. And so I saw that if

- 2.4 I wanted to make a career in corrections, the best way to do
- that was access that funding and go through schooling to -- in 2.5

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- order to do that, because that was the emphasis at the time.
- 2 Q. It does seem, though -- and tell me if this is
- 3 correct -- that the threat of violence against you,
- 4 specifically sodomy, was one of the reasons that got you
- 5 thinking about changing your career; is that right?
- 6 A. No, that's incorrect. I wouldn't agree with that at
- 7 all.
- 8 Q. Well, when you wrote -- said, "Big Bubba is going to
- 9 get me and take me in the shower," weren't you referring to
- 10 sodomy.
- 11 A. Sexual relations.
- 12 O. So -- so it wasn't --
- 13 A. Not -- not specifically sodomy, no. I didn't -- I've
- 14 never said that.
- 15 Q. From your experience as a corrections officer, what
- 16 kinds of activities did inmates, violent inmates, engage in the
- 17 shower?
- 18 A. Sexual relations.
- 19 O. Meaning?
- 20 A. All sorts of different types of activities.
- 21 Q. Such as?
- 22 A. Could be rape, could be --
- 23 Q. What kind of rape?
- 24 A. Well, there's only one kind of rape between males.
- 25 Q. Could be oral?

- A. Could be ora.
- 2 O. Or --
- 3 A. Could be sodomy. It could be a whole host of things.
- 4 It could be also taking you hostage, okay, and physically
- 5 assaulting you, sexually assaulting you, so forth, yes. That
- 6 was not my motivation, though, to -- I mean, it was -- it was
- 7 said in -- in terms of this is what was happening during that
- 8 particular time. And the way that I just explained to
- 9 higher -- to promote yourself was to get your degree. And  ${\tt I}$
- 10 said, I -- I'm not going to be a corrections officer my entire
- 11 life.
- 12 And so to promote myself within the Department of
- 13 Corrections in that -- at that time, which there were openings,
- 14 but you had to have education -- higher education, starting off
- 15 with a four-year degree. So that's what really gave me an
- 16 impetus and a motivation to go with my -- my -- to get -- to
- 17 get a degree. In which it really worked out, because I was
- 18 able to get a job as a supervisor, then went in parole and
- 19 probation and then into the academy. And without the
- 20 education, I wouldn't have been able to do that.
- 21  $\,$  Q. Now, when you teach courses to either aspiring or
- 22 existing law enforcement professionals, do you tell them the
- 23 sodomy story -- or the -- excuse me, the  ${\it Deliverance}$  story in
- 24 class?
- 25 A. The Deliverance story?

- 1 Q. Yeah, the story --
  - A. You mean the movie?
- 3 Q. -- the story that we just heard about how it was that
- 4 you got to thinking about getting involved in education.
  - A. Have I used it where? In -- in class?
- 6 Q. In classes. Have you told that to your students?
- 7 A. I have --
- 8 Q. And -- and do you --
- 9 A. -- I don't recall. I have -- I'm sure I have several
- 10 times.

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- 11 Q. And have you taught them or told them that story at
- 12 Valdosta State University?
- 13 A. I don't know, to be honest with you, because
- 14 primarily my teaching is online. I teach graduate students, so
- 15 I don't -- there's no avenue for that kind of interaction. I
- 16 may have mentioned it in a class as a guest lecturer.
- $\ensuremath{\text{\fontfamily Q.}}$  Right. And so this is another important piece. At
- 18 the time you speak of "Big Bubba," in 2023, you were speaking
- 19 to law enforcement, correct?
- 20 A. Correct. And they would understand what I'm talking
- 21 about.
- 22 Q. Tell me more about that.
- 23 A. Well, they would -- their experience would give them
- $24\,$   $\,$  an idea of what corrections are like in this case. I believe
- 25 those were jail administrators and jail personnel. So they

- would understand the ideology behind and the thinking that
- $2\,$   $\,$   $\,$  corrections officers do have as they work within and amongst a
- 3 prisoner population where the prisoner population has nothing
- 4 to lose for that type of behavior or activity.
- 5 Q. Does your belief about what law enforcement knows
- 6 regarding -- I think you said -- the realities of a "Big Bubba"
- 7 type situation include law enforcement officers who act and
- 8 function as police? Do you think they understand that?
- 9 A. I think they do. In fact, I've had several tell me
- 10 that after the session.
- 11 Q. Have you ever told the "Big Bubba" story to any of
- 12 the lawyers in this case?
- 13 A. No
- 14 Q. You're a former law enforcement professional as a
- 15 corrections officer, correct?
- 16 A. Correct.
- 17 Q. And your friends are law enforcement professionals,
- 18 correct?

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- A. Some.
- 20 Q. You are a law enforcement trainer, correct?
- 21 A. Correct.
- 22 Q. When's the last time you trained a class of law
- 23 enforcement professionals?
  - A. January of this year, January 2024.
  - Q. And what'd you -- what'd did you teach?

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- I taught in-custody deaths at the AELE jail seminar. voltage. 2 When's the last time you taught any sort of tactics? 2 Do you teach on the GLOVE? A. Probably 2010 or '12, somewhere in there. 3 3 Α. T have not. 4 Q. How do you stay current with use-of-force tactics? 4 O. Have you been trained to use it? I go and attend seminars and conference 6 presentations, primarily at the ILEETA, I-E-L [sic] --6 Ο. Do you possess a GLOVE? International Law Enforcement Educators Trainers Association, Α. T do not. You also have friends who are law enforcement 9 Q. Aside from conferences, do you do any other work to 9 trainers, correct? stay abreast of the current tactics used in use of force? 10 A. Correct. 10 And that includes tactics training as well? 11 A. Oh, ves. 11 Q. In the use-of-force context? 12 12 13 A. Oh, in use of force, now you're -- you're -- sure, 13 Ο. You're a law enforcement consultant for law enforcement officers and law enforcement agencies, correct? attend training, again, instructor training, where I have done 14 14 15 that before previously. 15 16 Q. When's the last time you attended instructor 16 Your friends are consultants for law enforcement training? officers and law enforcement agencies, correct. 17 17 18 A. I think it was 2018 or 2019. Actually, it was this 18 past 2024 at the AELE conference on the application and use of You are a law enforcement trainer who gives lectures, 19 19 20 20 right? Q. And for those who don't know, the GLOVE is a device 21 21 A. Correct. that an officer could put over their hand and it issues an And just so that we're clear, the last time you 22 22 23 electric charge. 23 taught officers how to handle themselves in the field was when? A. It would've been November of '23. 24 A. It's a distractionary piece of equipment, ves. And 24 it has a very, very low admittance -- an ampere admittance And what did you teach in November of '23? 90 1 A Arrest-related deaths So it would've been specifically, to answer your question, 2 O. So you gave a lecture?
- 3 4 Ο. Anything else? 5 And application. Α. What application did you teach? Prone -- grounding and prone restraint. COURT REPORTER: I'm sorry, repeat that. 8 9 THE WITNESS: Grounding and prone restraint.
- What is grounding? 10 It's techniques to ground to take an individual who 11 12 is resisting arrest to the ground and to control and restrain 13
- 14 Q. And what is prone restraint?
- 15 A. Prone restraint is actually after the person's been grounded, to control them to use various empty-hand control 16 techniques and/or intermediate weapons, depending on the case, to apply handcuffs and leg restraints. 18
- 19 Q. When was the last time you taught police officers the -- the subject of lethal force?
- A. Would've been July of '23. 21
- 22 O. And what did you --
- A. But -- but it's -- when you say -- you have to look 23 24 at -- many of my use-of-force programs touch on all aspects of
- force, not just singularly specifically on one or the other. 2.5

- 2 would've been July of '23.
- Q. And that would've been with the seminar on use of a
- 4 motor vehicle as a potential weapon?
- A. 5 No
- A. That was in May of '23 at AELE.
- O I see I see There was another seminar that I'm --8
- 9 I must be confused. There was another lethal-force seminar
- that you conducted in 2023? 10
- A. Correct. 11
- 12 July? 0
- 13

18

19

- 14 Q. What did you teach?
- 15 Deadly force, lethal force and the science behind it
- 16 and case litigation, as well as the second day was looking at
- simulators, the use of simulators. 17
  - Q. And what tactics did you teach?
  - A. How to approach traffic stops, parked vehicles, with
- reluctant type of employees -- or arrestees, subjects. There 20
- 21 was one scenario that we did that was a domestic violence
- 22 situation, as well as a active shooter.
- In your scenarios involving domestic violence or 23 24 active shooter, what hands-on practical teaching did you give?
  - A. We -- myself, as well as another instructor, had --

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- the first day was all lecture in all information. The second
- 2 day was practicing the hands-on approach to watching for
- 3 weapons, their distance, reactionary time, being able to
- 4 assess -- assess, and threat analysis, that type of thing.
- 5 Q. What is a hands-on approach?
- 6 A. Hands-on is realistic training where it moves from
- 7 the classroom to actual physical application of a tactic or a
- 8 technique that has been taught.
- 9 Q. And what school of training or what techniques did
- 10 you teach with respect to a hands-on approach?
- 11 A. I think I've already explained that.
- 12 Q. Okay
- 13 A. Yeah.
- 14 O. Have you taught de-escalation ever?
- 15 A. Yes, I have.
- 16 Q. When was the last time?
- 17 A. Oh, my gosh. It would've been part of the
- 18 November 23 training, but I have been teaching de-escalation
- 19 and crisis intervention since my days working at the prison and
- 20 the training academy and in-service, as well as at Ferris State
- 21 University in the academy. And subsequently, with
- 22 pressure-point control tactics, almost every instructor program
- 23 that I've ever put on or with basic officers going through,
- 24 there's always a segment, always a block on de-escalation.
- 25 O. And what education did you receive with respect to
  - ۵

- 1 de-escalation
- 2 A. I -- first, when I was working at the prison, we got
- 3 some training on that, limited. It was experience on how to
- $4\,$   $\,$  talk a prisoner into a cell or out of a cell. It was also when
- 5 I was with the Department of Corrections Crisis Intervention, I
- 6 underwent a seven-week program, GIST, as an instructor, just on
- 7 de-escalation and crisis intervention. I've had subsequent
- 8 training that I've gone through with -- at ILEETA.
- 9 O. What's ILEETA?
- 10 A. Again, the conference at ILEETA, various sessions
- 11 that they bring in. There was the integrated communication
- 12 assessment and tactics training that PERF has produced since
- 13 2016.

14

- O. And real quick, who's PERF?
- 15 A. Police Executive Research Forum.
- Q. And who is ILEETA one more time, just for the court
- 17 reporter?
- 18 A. International Law Enforcement Educational Trainers
- 19 Association has an annual conference where various instructors
- 20 will bring their various courses. It could be a two-hour
- 21 course. It could be an eight-hour course, four-hour course.
- $\,$  22  $\,$   $\,$  It could be a several-day course that they present, and I  $\,$
- 23 attend almost every year that conference and those various
- 24 sessions that are placed that are -- that are conducted.
  - O. Any other sources of education regarding

- 1 de-escalation tactics?
- 2 A. No. Other than, again, my own experience in doing it
- 3 and in training it for over 30 years and reading up and
- $4\,\,$   $\,$  researching the -- the published documents on the process and
- 5 the techniques.
- 6 Q. Have you ever coached or taught any agencies in the
- 7 state of Ohio regarding de-escalation tactic?
- 8 A. Coached?
- 9 Q. Or taught?
- 10 A. Taught?
- 11 Q. Consulted for, however you want?
- 12 A. Well, I'd have to say with -- when I was with
- 13 Pressure Point Control Tactics, PPCT, we had a lot of
- 14 instructors that came from Ohio. I've not been to any specific
- 15  $\,$  law enforcement department to do a seminar by myself, but I
- 16  $\,$  know that we have trained numerous -- I have trained -- been
- 17 part of training numerous Ohio law enforcement officers through18 PPCT.
- 19 Q. And I believe you said, "instructors." You've
- 20 trained force instructors that come from Ohio; is that right?
- 21 A. Yes.

22

- Q. Okay. You worked for a law enforcement agency known
- 23 as the Michigan Department of Corrections; is that right?
- 24 A. Correct.
- 25 O. And your clients are law enforcement officers and

1 agencies, correct?

A. Correct.

- 3 Q. You are and have been a teacher of college courses
- 4 for those who want to become law enforcement administrators,
- 5 correct?

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- 6 A. Correct
- 7 Q. Many of your students have been law enforcement
- 8 professionals, correct?
- 9 A. Yes
- 10 Q. And you run a Center for Applied Social Sciences at
- 11 Valdosta State University, correct?
- 12 A. Yes.
- 13 O. And it received start-up money from a company that
- 14 makes training simulators used by law enforcement
- 15 professionals, correct?
- 16 A. Correct.
- 17 Q. In July of 2011, the Board of Regents of the
- 18 University System of Georgia approved formation of the Center
- 19 for Applied Social Sciences at Valdosta State University,
- 20 correct?

21

- A. Correct.
- 22 Q. You are a co-founder of the Eques, E-Q-U-E-S, Group,

- 23 LLC, with Randall Murphy?
- 24 A. Correct. It's no longer in operation, but, yeah,
- 25 that's true.

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- Q. Eques is the Latin word for "Knight"; is that right?
- 2 A. Correct.
- Q. All right. This will be Exhibit 19. Let me do this.
- 4 I'll get it up for everybody to see, hopefully. All right.
- 5 Let's zoom in. All right. We have the Domestic Limited
- 6 Liability Certificate of Organization for Eques Group, LLC. Do
- you see that?
- A. Correct.
- 9 Q. Do you recall organizing the company on 11 -- that's
- 10 November 3rd, 2015?
- 11 A. Correct. I was a very, very small partner in that.
- 12 I didn't put any funds in with that, but I was part of the
- 13 training of that, yes.
- 0. So let's go back to the next page. Okay. And let's
- 15 zoom in. I believe the Eques Group has a principal office
- 16 address of 821 Dawsonville Highway, Suite 250-123 in
- 17 Gainesville, Georgia; is that right?
- 18 A. It's not correct. Now, at the time, it was.
- 19 Q. Right. At the time.
- 20 A. At the time.
- 21 Q. What was Dawsonville -- 821 Dawsonville Highway, what
- 22 was that? Is it a -- what kind of building?
- 23 A. That's a good question. I think it was where
- 24 Randy Murphy had an office, Randy Murphy.
- Q. Who's Marci Murphy?

- 1 A That's his wife
- 2 Q. And who's Randy Murphy?
- 3 A. He was a retired major from the Kansas City, Kansas,
- 4 Police Department and came to work for the Meggitt Corporation
- 5 in Suwanee, Georgia. And after his work there, after his
- 6 employment, he started this particular consulting and training
- 7 organization.
- Q. The two of you are listed as organizers of the
- 9 company; is that right?
- 10 A. Correct.

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- Q. How did that company come to be?
- 12 A. He asked me if I wanted to do some consulting and
- 13 training with him, and I said, "Yes, I could." But I said, "I
- 14 can't put up the money for it," which he did himself.
- 15 Q. When -- when --
- 16 A. So --
- Q. -- when did he first have that conversation with you?
- 18 A. Oh, goodness, I don't know. Well, I think we had
- 19 talked about it for many, many years. We never actually
- 20 pursued it, but I think around 2014, 2015, somewhere in that
- 21 nature --

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- 22 Q. Okay.
  - A. -- neighborhood.
- Q. With respect to your knowledge of Mr. Murphy, when
- 25 did you first meet him?

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- 1 A. I believe 1989 or 1990.
  - Q. And how did you meet him?
- 3 A. Through PPCT, Pressure Point Control Tactics.
- 4 Q. Tell me more about that. What is that?
- A. I was -- well, what is that?
- 6 Q. Yeah, about the meeting and how you guys came
- 7 together and who PPCT is.
- 8 A. PPCT, at the time, was the world's largest
- 9 use-of-force trainer of subject-control tactics, starting in
- in 19-- I want to say '87 or 1988, and I became the director of

around 1984, 1985. I became an advisory board member for them

- 12 research for PPCT. And as we brought in new staff instructors,
- 13 I was responsible for directing these new individuals that were
- 14 coming on a staff there. Everyone was required to do a
- 15 research project. And so based on my background, I became the
- 16 director of research, so I director supervised his research,
- 17 and that's when I met him at that time.
- 18 Q. And that --
- 19 A. Either it was 1989, 1990, '91, somewhere in there.
- 20 Q. Did you stay in touch with him as he grew in his
- 21 career?

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- 22 A. Yes, I did.
- 23 Q. And did you know him to be at Meggitt -- or Meggitt
- 24 (pronouncing), M-E-G-G-I-, double T, Training Systems?
- 25 A. Meggit --

- 1 Q. Meggitts.
- 2 A. -- yes. Yeah, Suwanee, Georgia. He -- as I said, he
- 3 became the -- their director of research after his subsequent
- 4 retirement from Kansas City, Kansas, Police Department several
- 5 years after.
- 6 Q. We're going to go to Exhibit 20. Do you recognize
- 7 who this is?
- 8 A. Yes.
- 9 Q. Is that Randy L. Murphy?
- 10 A. Yes
- 11 Q. Co-founder and chief knowledge officer at
- 12 Cyber Ops Alliance?
- 13 A. Correct.
- 14 Q. What is Cyber Ops Alliance?
- 15 A. I do not know.
- 16 Q. According to his LinkedIn account, in a post
- 17 eight years ago titled, "Why the Eques Group," he indicates
- 18 that "It was no accident that the founding partners chose
- 19 Eques. It is the Latin word for 'Knight.'" Did I get that
- 20 right?

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- A. That's what it says, yes.
- 22 Q. Do you recall choosing the -- do you recall choosing
- 23 the name?
- 24 A. I think that was -- as I recall, I -- I agreed with

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25 it. That was his idea.

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Q. Your -- the post says, "The Knight was expected to have not only the strength and skills to face combat in the violent era of the Middle Ages, but was also expected to temper this aggressive side with a chivalrous side to his nature. The ideals described were emphasized by the oaths and vows that were sworn in the Knighthood Ceremonies, much like the Oath a Police Officer takes today."

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- It goes on to say, "The virtues of the Knights of
  King Arthur's Court are the same as today: To serve citizens
  with valor, to protect the weak and defenseless, and fight for
  the welfare of all, to live with honor, obey authority and to
  always speak the truth. The Eques Group's approach to risk
  management was developed through decades of experience working
  with the law enforcement profession."
- 15 I'll stop there. Do you recall these concepts as 16 being shared between you and Randy?
- 17 A. Limitedly, or not that we spent any time on that. I
  18 think it was primarily his goal to align that with that
  19 particular metaphor.
- 20 Q. Did you agree with that metaphor?
- 21 A. Oh, yeah, I did. Sure. I think that's part and 22 parcel of speaking the truth and providing a service that --23 that's appropriate, that's professional.
- Q. And that service would be to law enforcement professionals and that agencies, correct?

- 1 A. That's what it was designed to do, ves.
- 2 Q. Mr. Murphy is also the former director of research at
- 3 Meggitt Training Systems. You've said that before, correct?
  - A. Yes, that's true.
- Q. And Meggitt, with Randall Murphy, helped you found the Center for Applied Social Sciences; isn't that right?
- 7 A. That's correct.

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- Q. How did that relationship start such that Meggitt
- 9 would eventually give \$20,000 to start your -- your center?
- 10 A. We did a research project for -- I was on part of a 11 research project that Mr. Murphy designed, and I helped him
- 12 design for the Meggitt Corporation on the use of simulators.
  - O. That's the 2012 --
- 14 A. Correct.
- 15 O. -- research that you did?
- 16 A. Yes
- 17 Q. And we'll talk about that. Okay. And that research
- 18 in 2012, just to summarize, was seeing if simulators created
- 19 stress reactions in officers, generally stated, correct?
- A. In a virtual environment.
  - Q. In a virtual environment.
- 22 A. Yes
- 23 Q. All right. And you used Meggitt systems at that
- 24 point?
- A. Yes

- 1 Q. How did you find out about this Meggitt technology?
- 2 A. I had -- first of all, I had been on their FATS
- 3 machine, shoot-don't-shoot machine, many, many, many years
- 4 before. And through our association with PPCT, and then when
- $5\,$   $\,$   $\,$  he went to work for them, he contacted me and asked me to be
- 6 the director of the research of this project.
  - Q. When did he do that?
- 8 A. I want to say 2008 or '09, while I was still at
- 9 Western Illinois University.
- 10  $\,$  Q. So you brought this relationship, informal, though,
- 11  $\,$  it was at the time, with Mr. Murphy to Valdosta.
  - A. You say, "brought this relationship"?
- 13 Q. Yeah, you would have had Mr. Murphy as a professional
- 14 contact, a friend, a relationship as you entered
- 15 Valdosta University.

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- 16 A. Yes, I came -- yeah. Right. Because I've known him
- 17 since, like, 1989, 1990, somewhere in there, '91.
- 18 Q. And so it makes sense you would have turned to his
- 19 gear, his technology, and he would have then helped support the
- 20 founding of your center, fair?
  - A. Well, that's what happened, yes.
    - Q. Yeah. Now, he left Meggitt in 2015, the same year
- $23\,$  you both founded Eques. Do you know that?
- 24 A. That's correct, roughly around that time.
- 25 O. And did he leave to join the company that you

- 1 founded?
- 2 A. I think his -- his -- as -- as I recall my
- 3 understanding of why he left, was Meggitt was going in a
- 4 different direction, and Meggitt was -- we had finished the --
- 5 the project. He had presented the project. He had refined the
- 6 equipment for Meggitt, and his funding for his job ran out.
- 7 And that's when, after that happened, we began to talk about --
- 8  $\,$  like I said, we had talked about training together, consulting
- 9  $\,\,$  together many years before that, but that's in and around the
- 10 time that Eques began.
- 11 Q. And then you would join with him in 2015, and as it
- 12 says here in the post, "The Eques's Group" -- "Eques Group's
- 13 approach to risk management was developed through decades of
- 14 experience working within the law enforcement profession,"
- 15 correct?
- 16 A. Correct.
- 17 Q. The post indicates, "We use research-based,
- 18 evidence-based, and field-proven methods to offer our clients
- 19 practical, rational and sound risk management solutions,"
- 20 correct?

21

24

- A. Correct.
- 22 Q. "The Eques Group's approach goes beyond certification
- 23 and verification," correct?
  - A. That's what it says, yes.
- 25 O. And did you issue certifications and verifications

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- with Eques? And you and Mr. Murphy founded Eques together but A. I don't recall that we ever certified anyone. 2 Eques is not mentioned in any of your CV, right? 2 3 Did you have a certification process --3 A. Yes. It's not there. 4 A No Q. Is -- what happened to Eques? -- or verification? Did you have a verification Well, we didn't get as much business as we thought we process? 6 6 did -- or would. And so he decided to because he was the A. That's a good question. I'm not sure. We reviewed primary consultant for it and financier for it, so we just --8 policies and procedures and training and assisted in refining and there were some medical issues that he was undergoing, 9 that. So if verification, I guess, that would be part and 9 which I'm not going to talk about, so that's primarily. parcel of that. That's how I would look at it. 10 O. Were there any agencies that Eques ever worked for? 10 Q. Finally, the post says, "With direct input from our 11 11 A. Were there any? 12 clients, we assist with the development of policies, 12 O. Any agencies? 13 implementation and monitoring of the processes to help meet or 13 A. Yeah, Topeka, Kansas. That was one that I recall exceed established standards of professional law enforcement." offhand. We did some other training, as I recall, but not 14 14 15 15 specifically. 16 O. Did I read that right? 16 Q. What kind of training do you recall for Topeka? A. Yes, sir. We went in and did an assessment of their 17 17 18 O. And is that what the company did? 18 use-of-force reports. We then looked at I think it was like A. Yes. We -- like I said, primarily we didn't have six months of use-of-force incident reports. We then gave them 19 19 very many projects, but we did help refine and revise policies, 20 20 recommendations with their legal counsel and their chief and recommended implementation, and did training. their administrators, recommendations on revising their 21 21 Q. Why don't you have any of this mentioned in your CV? use-of-force policies, their response to the mentally-impaired 22 22 23 A. Because we are no longer doing it, and I -- I do have 23 policies, as well as we trained the whole department in use of 24 24 the actual training programs that we put on and the consulting force, in the policy and implementation of that, as well as we that we did in -- in the latter part of my CV. trained the whole department in arrest-related death, custodial 105 1 death types of issues. 1 A Yes Michael Hazlett, that's correct
- 2 Q. And were these through seminars?
- 3 A. Yes
- 4 Q. Where you would talk about the case law?
- 5 A. Yes.

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- 6 Q. Any other --
  - A. Some of it. Some of it was case law, but not the
- 8 full extent of it.
- 9 Q. What was -- any other aspects that you would teach at
- 10 Topeka besides the case law in a lecture-style format?
- 11 A. The policy, the reason for the policy, how to
- 12 implement the policy, answering questions about the policy. As
- 13  $\,\,$  I recall doing that, we had their legal counsel for the City
- $\,$  14  $\,$   $\,$  there as well, providing additional training with us at the
- 15 time, as well as the chief.
- 16 Q. Can you think of any other agencies -- strike that.

  17 Can you think of any other training that you gave to
- 18 Topeka?

22

- 19 A. No. That would be it.
- 20 Q. With respect to any other agencies that Eques would
- 21 have worked for, can you think of any other agencies?
  - A. No, sir, not right off the -- no.
- 23  $\,$  Q. The research that we talked about was published in
- $24\,$   $\,$  the Law Enforcement Executive Forem, you and Mr. Murphy and
- 25 M.H. Hazlett, H-A-Z-L-E-T-T, in 2012, correct?

- Q. Michael?
- 3 A. Yes
- 4 Q. And you analyzed perceptions and misper-- the title
- 5 was, "Analyzing Misperceptions and" -- oh, my gosh -- the title
- 6 was, "Analyzing Perceptions and Misperceptions of Police
- 7 Officers in Lethal Force Virtual Simulator Scenarios." And
- 8 that was published in the Law Enforcement Executive Forum,
- o chae was pasifoned in the baw biforeement bar
- 9 correct?

12

- 10 A. Yes
- 11 Q. During -- in that research, you don't disclose your
  - relationship to Mr. Murphy nor any of the financial benefits
- 13 that his company conferred upon you relative to your research,
- 14 do you?
- 15 A. No. I never have.
- 16 Q. Are you familiar with the need to make disclosures
- 17 where research is concerned?
- 18 MR. LUTE: Objection. You may answer.
- 19 A. I'm aware of it, but for that journal, it wasn't
- 20 necessary. It wasn't required of us or informed of us to do
- 21 so.
- ${\tt 22}$   ${\tt Q.}$  Have you been trained or studied in the ethics of
- 23 reporting interests  $\operatorname{--}$  shared interests in the creation of
- 24 journal articles for publication?
- 25 A. Sure.

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- Q. In peer review?
- 2 Yes.
- 3 O. Do you know if Law Enforcement Executive Forum is
- 4 peer review?
- A. Yes, it is. It was. It's no longer in -- in
- publication. 6
- O. What is your knowledge of -- of disclosure
- 8 requirements from an ethical point of view in journals that
- 9 appear --
- A. When it's necessary and when it is -- is required by 10
- 11 that particular journal.
- Q. Is that the full extent of your knowledge? 12
- A. Yeah, yes. 13
- O. Randall Murphy is also noted as a contributor to your 14
- book, authored and first published by you and Mr. Gary Vilke, 15
- and that is the 2018 Guidelines for Investigating Officer 16
- Involved Shootings, correct? 17
- 18

21

- 19 In the contributor description of Mr. Murphy, there's
- 20 no mention of your relationship to him, correct?
  - A. Correct.
- Q. Nor is there any mention in your description as a 22
- 23 contributor of Mr. Murphy's relationship to you or Meggitt?
- A. Correct. 24
- Now, I believe we've touched on this in your academic

- work a bit. I have a couple -- I have one exhibit to show you,
- but the bottom line, I think we can agree, is that your
- 3 academic writings show a desire to defend criminal justice
- 4 practitioners. Would you agree?
- A. No. I would agree to make them aware of certain
- 6 issues and topics and subjects matter that emerge from
- incidents, liability, legal, tactical, training, so forth.
- O. And the desire to make them aware is so that you
- 9 might defend them or allow them to defend themselves in
- 10 criminal justice cases?
- A. Allow them to defend themselves, and I might add as 11
- 12 I've already alluded to earlier, to work on implementing
- 13 recommendations to enhance their ability to having more
- efficient and effective law enforcement or correctional 14
- 15
- 16 Q. In what we've documented as Exhibit 10, which was the
- 2000 article titled, "International Police Strategy and 17
- 18 Management" -- or for the International Police Strategy and
- Management Journal titled, "Emerging Trends in the Police 19
- Failure to Train Liability," you said, "Ongoing training is 20
- critical to the avoidance of police-directed civil litigation 21
- and in structuring a defense to legal assertions," correct?
- 23 A. Correct. I think we've already gone over that, but
- 24 ves.

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- And you also wrote in that same article -- that same
- 1 exhibit or that same document, "There is no systematic method
  - for collecting information specific to civil litigation.
- Researchers are forced to speculate about the trends and
- patterns of police civil litigation," correct? 4
- A. Right. There's no entity that -- that actually 5
- 6 collects, analyzes, assesses those. But I have -- I have done
  - that in several subject matters through content analysis.
- Q. You wrote in that same article, "Surveys administered 8
- 9 by AELE reports civil lawsuits filed against the police in 1967
- rose from 1,741 cases to 3,894 cases in 1971, a 124 percent 10
- increase," correct? 11
- 12 A. Correct. And that was their survey that they did,
- 13

- 14 Q. But you don't mention in your -- any of your research
- 15 in that article that Monroe v. Pape was already ten years old
- by 1970 -- I'm sorry, was -- was five years old by '71 -- I'm 16
- sorry, by '61. Try this again.
- 18 A. That was ten years old.
- 19 Q. Ten years old by '71. It was decided in '61. I'll
- do that again. You don't mention that Monroe v. Pape was
- already ten years old by 1971, correct? 21
- 22 A. Correct. I'm only reporting -- as I recall -- I'd
- have to look at the article first, but secondly, I'm reporting 23
- 24 what the survey of AELE found.
- 25 Q. I understand. And as you report your -- and I notice

- 1 this in your work quite a bit -- you will report case decisions into your research or you will report other folks statistical
- findings regarding the number of lawsuits filed, correct?
  - A. Correct.
- 5 O. Is there any particular reason why you've never, I
- 6 think -- I don't think ever one time published anything about
- the manner in which African Americans are or are not treated
- with disparate treatment by a police? 8
- 9 I think we -- I have in the -- our book on
- officer-involved shootings. We -- I look at the numbers of --10
- the numbers of reported shootings and/or the litigation that 11
- 12 looks at that, but not, perhaps. I'd have to go back and I
- 13 believe it's Chapter 3 or 4, as I recall, and to look at the
- 14 numbers that have been reported.
  - O. You -- you --
- 16 A. But -- well, I've trained on that. And so if I don't
- put it in an article or a book, I mean, so what's the point? 17
- 18 O. Well, I -- I don't know what the point is. I'm --
- 19
- -- I'm just pointing out that --20
- 21 A. -- so, I mean, I'm just trying to answer your
- 22 question.
- Q. -- but as an academic studying 1983 litigation, 23
- 2.4 you've never published any journal article in any peer-review
  - source that talks about 1983 litigation from the perspective of

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- the arrested citizen, have you? A. Not in a Section 1983 perspective. I think I did 2 Not specifically. I think I do comment in the book 2 studies that have looked at that. I've certainly brought it 3 with my dissertation that was looking at citizen resistance 3 4 during police arrests. And that was a -- a article that was 4 into my training, but not a specific article on that topic. published by the FBI, as I recall. Q. In that article of 2000, you wrote, "Surveys administered by AELE report civil lawsuits filed against the 6 Q. Timely article back then? 6 A. Back then, ves. police in 1967 rose." And that was the time frame of 1971. Monroe v. Pape started civil rights litigation as we know it; 8 Yeah, that would be the Kent State experience and 9 other --9 would you agree? A. Well, no, this was way after that. This was -- my 10 A. I would agree. 10 dissertation was done in 1990. 11 Q. And would you agree that by 1971, '81, even '91, it 11 Q. Sure. But, I mean, if historical context of --12 12 was an emerging area of the law? 13 A. Oh, sure. 13 A What was? O. -- your career starting with -- about the Kent State O. Civil rights litigation. 14 14 time, give or take, and then going into the 1990 time frame, 15 15 you had mentioned it in your Ph.D. dissertation, right? 16 16 O. Under 1983. A. Correct. A. And I think I've written about it. In fact, it's in 17 17 18 Q. Have you ever written on it beyond that? 18 my book --No, not that -- now you're racking my brain. I'd 19 19 Yeah, I -have to look, but I don't recall specifically what you're, I 20 20 A. -- Monroe versus Pape, as well as Monell, as well as think, alluding to. numerous other Supreme Court decisions. 21 21 Q. Have you ever engaged in the systematic collecting or And is the growth of civil litigation in that area 22 22 23 trend analysis of use-of-force complaints against police? 2.3 therefore a by-product of the arrival of new case law and 24 doctrine an interpretation of 1983, or is it indicative of A. You mean using citizen complaints as a unit of 24 analysis? police being targeted? 113 114 1 A. I think it's probably both. 2 Q. Now, remember I asked you if you used your articles 2 to help make your book? I think we talked about that earlier. opening sentences. 3 3 4 A. Correct. 4 A. Of paragraph 2? Q. I'm going to give you -- if -- if you take your book 5 5 6 here, I'm going to just try to get something clear, something 6 7 that I was curious about. The first sentence of page 5, second is what is behind me. paragraph, when you have that locked in, let me know. A. Okay. 8 8 9 A. Page 5? 9 Q. Uh-huh (positive response). that was available in 2000, but never included it in the 10 10
- A. Yeah, I'm there. 12 Q. Okay. And it's going to be the first sentence of 13 page 5, second paragraph. 14 A. Okav. 15 O. You see that sentence?
- Okay. Let me just call up the article for you here 17 18 so we have both. Okay. I have -- I'm going to pull up here --

16

21

A. Yes.

- 19 okay. All right. That should work. Let me close this. It should go up now. 20
- The paragraph I'm directing you to -- and I'm going 22 to show it to the group here in the -- in your paper is the 23 first sentence of page 5, second paragraph, and it seems to be 24 nearly identical to the second full paragraph of page 171 shown here in the article. So your book at page 5, second paragraph 2.5
- matches almost exactly to this particular article at 171. So after you've taken a look at both sentences, let me know the Q. It's going to be page 5, second paragraph of the book compared to second full paragraph of 171 of the article, which In the 2023 edition of your book, you add research original 2000 article. You say, "Previous research reveals 11 that civil lawsuits against police are widespread," and then 12 you count Worrell, W-O-R-R-E-L-L, Kappeler, K-A-P-P-E-L-E-R, as 13 authors or sites. 14 15 And you also write, "It's also a major concern to law 16 enforcement officers." And you cite Garrison, Scogin, S-C-O-G-I-N, and Brodski, B-R-O-D-S-K-I, and police chiefs. 17

You cite Vaughn, V-A-U-G-H-N. You finally say government

folks, but it appears that you are -- and tell me if I'm

correct -- you're incorporating the 2000 research and adding

leaders, and you cite MacManus, M-A-C-M-A-N-U-S, all in page 5

So again, in page 5 of your book, you're citing these

these research sources to the book. 25 A. As research comes out and has new information, yeah,

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2.4

of your book.

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I try to.
                                                                                           which we're not talking about, is that there's no accurate
          Q. Well, that research was available in '98.
                                                                                           data --
 2
                                                                                      2
 3
          A. Okay. I didn't include it then.
                                                                                      3
                                                                                                O. Yeah.
 4
          Q. In '97, and I'm wondering why?
                                                                                      4
                                                                                                A. -- and there's no entity that routinely --
               I wasn't aware -- I wasn't aware of it.
                                                                                           governmental agency or private agency that routinely -- that --
 6
          Q. Okay. That's fine. And that's -- that's all I was
                                                                                      6
                                                                                           that's a -- would be a huge task, but no one does it.
      wondering. I was also interested in how you have evolved your
                                                                                                O. In your book, although you gite some cases that
      ideas around this widespread major concern in law enforcement
                                                                                           involve the First Amendment and you quote the First Amendment
 9
      regarding civil lawsuits against police. How did you --
                                                                                      9
                                                                                           in a table, your book has no discussion or analysis of how the
          A. Because things change, trends change, cases change,
                                                                                     10
                                                                                           First Amendment can be a source of constitutional violations.
10
      more research comes out and changes. So I try to keep up as
                                                                                           such as with retaliation?
11
                                                                                     11
      best I can on the research, the cases. I mean, this book is --
                                                                                                A. Yeah. I didn't go into that much because I -- I
12
                                                                                     12
13
      I could have tripled the pages for the number of cases.
                                                                                     13
                                                                                           focused more on the other amendments, and so....
               And so things change, research change, trends change,
                                                                                     14
                                                                                                O. And why is that? I'm just interested.
14
15
      and so I try to keep up to the best I can to provide the best
                                                                                     15
                                                                                                A. Just -- just my own choice.
      information possible. And \operatorname{\mathsf{--}} and as new research, I try to add
16
                                                                                     16
                                                                                                Q. Okay. There's no discussion or analysis of how
      it. I mean, that's -- that's -- with this new edition, I -- I
                                                                                     17
                                                                                           officers can violate the First Amendment rights of public
17
18
      can't remember or recall, but I -- it's over a hundred new
                                                                                     18
                                                                                           protesters if they use excessive force during rallies or
      cases, as well as probably 50, 60 new research articles, either
                                                                                           marches, especially following George Floyd, correct?
19
                                                                                     19
20
      law articles, legal articles, journals, academic data, so forth
                                                                                     20
                                                                                                A Yes
      and so on. So I tried it.
                                                                                     21
21
                                                                                                O. Why is that?
          Q. And so between 2000 and 2023 then, you've been
                                                                                                    I didn't see a need to put that in there.
22
                                                                                     22
23
      tracking research regarding civil lawsuits against police,
                                                                                     23
                                                                                                O. In a -- in a book on civil liability and criminal
24
                                                                                     24
      correct?
                                                                                           justice?
          A. Yes. And part of the problem as I say in the text,
                                                                                                    Well, like I said, I could have wrote voluminous --
                                                                                      1
      I've never had a chapter on that. I do talk about racial
                                                                                                A So that's not --
      profiling and other types of issues in other subsequent
                                                                                      2
                                                                                                Q. -- that's --
 2
      chapters.
                                                                                      3
                                                                                                     -- you know --
 4
          O. There's no mention of selective enforcement of the
                                                                                      4
                                                                                                Ο.
                                                                                                     -- well, you have cases that involve the allegation,
 5
      law as a problem or even a debate amongst law enforcement.
                                                                                      5
                                                                                           correct?
 6
 7
          A. Explain.
                                                                                                Q. You cite cases where that --
          O Your book doesn't mention selective enforcement of
                                                                                                A Right
 8
                                                                                      8
 9
      the law as a problem for law enforcement.
                                                                                      9
                                                                                                     -- all right. But -- but you don't explore from an
          A. Explain what you mean.
                                                                                           academic perspective the phenomenon of or the research behind
10
                                                                                     10
          Q. In what way? What do you -- what I'm -- I --
                                                                                           selective enforcement, do you?
11
                                                                                     11
12
          A. I don't understand your question. Selection
                                                                                     12
                                                                                                A. No. And that's my choice.
13
      enforcement of what?
                                                                                     13
                                                                                                O. And --
          O. The law.
                                                                                                A. It's my book.
14
                                                                                     14
15
          A. Okay. And give me some -- give me more than that or
                                                                                     15
                                                                                                O. -- of course.
      I can't answer your question.
                                                                                     16
                                                                                                A. If you want to write a book on selective enforcement,
16
          Q. The manner in which, say, black, white, or brown
                                                                                           well, be my guest. I'd love to read it.
17
                                                                                     17
                                                                                                Q. I'm -- I'm -- I am trying to understand precisely
18
      people are arrested, the manner in which traffic stops are
                                                                                     18
19
      conducted and for whom those conductive stops result in
                                                                                     19
                                                                                           your -- the context of your ambitious subject, civil liability
      violence. There's been no mention of that. Selective
                                                                                           in criminal justice. So there's no mention of one of the
                                                                                     20
      enforcement is that you -- you're familiar with the doctrine of
                                                                                           nation's largest and most corrupt police scandals involving the
21
                                                                                     21
22
      selective --
                                                                                     22
                                                                                           victims of a police unit in Chicago, Illinois? You might be
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2.5

A. Yes. But I'm -- but I also -- I have cases -- case

O. Well, you have -- granted you -- you have cases --

decisions on that very topic.

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A. Yes. But I would take cumbrance with your -- I mean,

I write about the Rampart scandal, the Christopher Commission

familiar with Jon Burge.

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with Rodney King case and others. So, I mean, this is -answers. There's no mention of the findings in the Bureau of Justice Statistics 2020 report based on this 2020 survey about anyway. 2 3 O. Well, I'm interested in that. I'm not criticizing 3 interactions between police and the public that black and you. I'm interested in why you didn't write about Burge 4 Hispanic persons were more likely to experience the threat of 4 because he commanded Area 2 detectives from Chicago and you force or use of nonfatal force during their most recent police worked in Western Illinois University. And he did his work 6 6 contact in 2020 more so than a white person. You don't mention from 1970s through the early '90s as they shocked and any of that, do you? suffocated and beat suspects. I'm just wondering if --A. I don't. But I do cover consent decrees and the 9 A. I just didn't -- I'm not aware of that -- that 9 CRIPA, which is where the DOJ comes in and does investigation. particular case or that particular incident. I'm not privy to 10 So I have a whole chapter on that. 10 that, so I didn't include it. Q. But you do rely and know of the justice statistics 11 11 with respect to the number of civil litigation or allegations 12 O. Okay. You're not familiar --12 13 A. I'm not familiar with that. 13 of excessive force or force in arrests, right? O. -- with Jon Burge --MR. LUTE: Objection. Go ahead if you know. 14 14 15 A. I didn't put Serpico in there either, and so.... 15 A. Sav that again. 16 Q. But you're familiar with Serpico? 16 Q. The Bureau of Justice Statistics 2020 report covers police encounters, number of them over -- across the country, 17 Oh, veah, absolutely. 17 Α. 18 Q. But you're not familiar with Jon Burge who 18 and provides data in that respect. You're aware of that data? tortured --MR. LUTE: Objection. Go ahead. 19 19 20 A No 20 A. I think I already talked about that earlier. 1996 it started where the -- yes, and I used to have a table in my 21 O. -- people into false confessions? 21 No, I'm not that one. That one I -- there -- there's former additions, but I didn't include it in this one because 22 22 23 some things I'm not privy to. I -- so it wouldn't be in the 2.3 it became cumbersome. And I do talk about that, as well as quite a few other items in that regard. So, I mean, it's --24 24 book. Granted, I'm fine with that. I thank you for your O. Why doesn't your book mention the notion, even the 1 claim, that black and Hispanic persons are more likely to 1 how tort reform has reduced the number of lawsuits filed? experience the threat of force? 2 A. No, I have not, not that I can recall. 2 MR. DICELLO: Objection. You may answer if you Have you ever done any training or given any lectures 3 3 4 4 regarding the number or type of lawsuits filed since tort know. A. I don't -- I -- I'm looking at the civil liability, 5 reform? 6 the trends and patterns of that and then other research. So I I am sure I have, but not specifically in the -- in a 7 can't include everything. There was no -- there's no 7 slide that says here's tort reform and here's the outcome and conspiracy to exclude or include one thing or the other. And the results and the -- the trends of that. I've trained quite 8 8 9 so that's -- if I don't have it in there, that's -- that's the 9 a bit on consent decrees and qualified immunity and the trends reason. I do cover other aspects of that, absolutely, and as towards that and as well as it's in my book as well. 10 10 11 well as in our other text on officer-involved shootings and 11 O. You have no detailed discussion about the blue wall 12 arrest-related deaths, custodial deaths, which we've already 12 of silence in any of your writings, do you? 13 13 Q. Best I can tell, none of your research or writings 14 14 You have no detailed discussion about the blue code, 15 mentioned tort reform. 15 do you? A. Only from the regard of qualified immunity in 16 16 A. No. Chapter 5 where I do talk about that where there are numerous Or the blue shield? 17 17 Q.

24 immunity at the state and at the federal level. 24 as you know?

25 Q. Have -- have you ever done any research or writing on 25 A. I'm not sure how yo

individuals that I recite their research that call for the

Supreme Court to -- to reverse their decision on that. So I do

talk about that. That isn't, to me, part of tort reform trying

to -- and I've certainly covered it in a lot of the training.

In fact, I just talked about that back in the fall three times

as I recall in training about tort reform and about qualified

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25 A. I'm not sure how you're using it, so I don't know

emphasis or part of what I'm trying to do with this

particular -- the goal of this particular text.

It's not part of the book. It's not part of my

What's the -- what is the blue wall of silence as far

124

A. No.

O. Why not?

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- 2 Q. Well, you just answered my question if it's mentioned 2 I'm not saying that it happens or not. Just saying, 3 in the book. 3 are you aware of the concept that some --4 A. It's not, but I'm not sure how you're using the blue 4 wall of silence. Is that something -- the uniform of the police that they're conspiracy? I'm not sure what you're 6 6
- 8 Have you ever heard that phrase before "the blue wall 9 of silence"?
- A. Not really. 10

usina.

- 11 Q. Do you know anything of the mentioning of the phrase
- "the blue code" or heard anything like that before? 12

what you mean by that. You'd have to tell me.

- 13 A. No, no, not that I can recall in any of my research or classes. 14
- Q. You've never heard of the blue shield? 15
- 16 A. I'm not sure what you're using or how you using it.
- Q. I'm not -- I'm just asking if you have any -- have 17
- 18 ever --

2

17

- A. Blue shield? 19
- O -- heard of this term --20
- 21 A. No.
- -- these terms? All right. Are you aware of the 22
- 23 concept that officers don't report each other's wrongdoing?
- 24 Are you aware of that concept?
- MR. LUTE: Objection. Go ahead.

- A. Good, I'm glad you qualified it.
  - Yeah, because I know you -- you're sensing this --
    - A. I'm -- no, I'm trying to think, okay, what -- what is
  - your intent on that. I've heard of that. Sure.
  - 8 Okav. So you have heard of the blue wall of silence?
  - 9 No. I've heard what you just mentioned in terms of
  - officers not reporting other officers. 10
  - Q. How about --11
  - 12 A. I've actually seen it.
  - 13 O. -- and how about the notion of officers protecting
  - 14 each other when they create -- or when they engage in acts
  - of -- of violence? 15
  - A. That can happen. 16
  - O. Have you ever heard that concept referred to as the 17
  - 18 blue wall of silence?
  - A. Not really, no. 19
  - O. Not really, or --20
  - 21 A. Not -- not in terms of the way you're defining or --
  - or phrasing it, the concept. 22
  - 23 Q. How would you define it, or --
  - 24 A. Conspiracy.
  - Conspiracy to what? 25

125 126

- A. To defraud, conspiracy to cover up. Like, for 1
  - example, the Rampart Precinct situation in LAPD. Okay. I
- don't recall ever seeing anything about a code of silence or a
- blue shield, but certainly that kind of behavior of cover up 4
- and looking the other way, if you will, was certainly there and 5
- 6 not reporting others misconduct or crimes.
- 7 Q. And while you don't mention the blue wall of silence,
- the blue code, or the blue shield for the reasons you've given, 8
- 9 apparently not knowing the terms, you do cite at page 8 of your
- book studies that identify the claims which plaintiffs are more 10
- likely to win against police officers, don't you? 11
- 12 A. I don't know. I'd have to look at the --
- 13
- A. -- whole context --14
- 15 O. -- please take --
- 16 A. -- of that.
  - Q. -- please take a look at page 8.
- A. Okay. I'm -- where are you at on page 8. 18
- 19 Q. You can just scan the page. As I said, that you
- study -- you cite studies there that identify the claims which
- plaintiffs are more likely to win against police officers. 21
- 22 A. Okav.
- Is that right? 23
- 24 A. Well, I don't know where you're --
- O. Just look at the cites on the book and tell me if --2.5

- 1 A. What -- what cites are you referring to?
  - O. Those that are on the page.
- Which ones?
- O. All of them. 4
- 5 A. Be specific.
- All of them. There's -- the page isn't very large.
- 7 It's just I believe there are studies cited there that identify
- the claims which plaintiffs are more likely to win. 8
- 9 A. I think it was Kappeler in 1993, if that's what
- you're referring to. 10
- O. Yeah. And the studies that mentioned the claims, 11
- 12 litigation, financial losses of law enforcement agencies
- insured by the Michigan Municipal Risk Management Authority are 13
- listed there, right? 14
- A. Correct. From our study that we've already 15
- 16 identified and gone over.
- 17 Q. At page 9, you report on how Texas police chiefs say
- 18 the fear of lawsuits make it more difficult for them or their
- 19 officers to do their job, correct?
- A. That's a survey that I think del Carmen did as well 20
- as Michael Vaughn. 21
- 22 Q. At page 13 and 14, you have tables about how large-,

- medium-, and small-sized police agencies have paid out in 23
- 24 damages --
- 25 A. Yep, there you go.

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Q. -- right?

A. There you go. It's there. The Schwartz study,

probably one of the more comprehensive studies on the issue.

Q. And while you've never mentioned the likelihood of

black folks being exposed to violence by police, you have

mentioned, as I see here these tables, the amounts paid by

the civil justice system; is that right?

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- A. Correct. It shows the trends of payouts that is from one law professor from Berkeley, her study, and the trends and the payouts of numerous studies, which is probably the most comprehensive study that I'm aware of that published this type of data when there's not much data out there.
- Q. At page 16, you write that there are efforts -that -- that you write the following: "Efforts to acquire
  detailed and consistent data about the trends of civil
  litigation in law enforcement continue to be problematic as
  there is no governmental entity which requires agencies to
  collect and submit information about lawsuits filed against
  them," correct?
- 21 A. Correct.
  22 Q. And then page 18, you write, "As stated, detailed
  23 national data are not systematically collected, therefore it is
  24 difficult to identify definitively the trends in police civil

litigation," correct?

- 1 A. Right. There's limitations on all of this information.
- 3 Q. At the same page, you mentioned, however, the
- 4 Schwartz study, which you say provides useful data, which shows
- 5 the breadth and scope of payouts, awards of plaintiffs over a
- 6 broad-base number of diverse law enforcement agencies
- 7 nationwide and underscores the fact that an officer or
- 8 administrator is almost always indemnified.
  - A. That's what she shows with her study.
- 10 Q. And why are you including the notion that officers
- 11 are almost always indemnified in court --
- 12 A. Because that's what her study's showing.
- 13 Q. -- let me finish my question. Just wondering why
- 14 you're -- as an academic, you're focused on whether officers'
- 15 liability is covered by an insurance company? That's what
- 16 indemnification means.
- 17 A. Correct.

9

18

- Q. So why are you focusing on that in your research?
- 19 A. Because that's the outcome and results of her study.
- 20 That's what one of her central findings were. And I'm
- 21 reporting that in a civil liability, but because again, it's
- $\,$  23  $\,$  this topic. So that should -- if you're a reader, that should
- 24 speak volumes to you.
- Q. And -- and so I just want to understand your focus on

12

- the concept of indemnification as an academic is inspired by what?
- 3 MR. LUTE: Objection. You may answer.
  - A. I've already answered. She showed -- this is her outcome. It's not my outcome. So I go through two to three pages of a very detailed analysis, again, the most comprehensive, which I teach my students, that this is civil liability can not only be a problem, but if you lose, you have big losses to look at.
    - So should -- as you read through the book, go through a course, go through a training, should at least encourage to, all right, how do we correct these issues? How do we run a more efficient and effective organization? Which goes back to many of the things that you've already asked me through the course of the morning and the afternoon from a risk management perspective. And I identify various high-profile topics. One of them obviously is force, as well as search and seizure and false arrest, false imprisonment, and so forth.
  - So this comes out of her study to -- to go along with reporting. So to be fair to her, to be an accurate reporter of this and using this, which I got permission from her to do this, by the way, and this is what her outcome of her study shows. And that's all it means.
  - Q. And I appreciate that. Did you -- do you cover or have you ever researched actuarial data in insurance claims?

- 1 A. The MMRMA. That was the loss and the loss claims.
  - That's the only ones I've ever had privy to.
- Q. And as a function of teaching civil liability in the criminal justice system, do you spend time in other courses on
- 5 whether officers are indemnified for the wrongdoing?
  - A. Not specifically on that, no.
- 7 Q. Okay. At page 18, you say, "What appears to be clear
- 8 and continues to be shown" -- "what appears to be clear and
- 9 continues to be shown, as illustrated by the studies presented,
- 10 is that police continue to be targets of litigation"; is that
- 11 right?

2

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- 12 A. That's what I said, and we've covered that this
- 13 morning.
- 14 Q. And this is your reading of the information that you
- 15 would say on page 16 is problematic? That is, it's difficult
- 16 to identify the trends of police in police civil litigation,
- 17 correct?
- 18 A. It is difficult.
  - Q. And this is your conclusion from that data; is that
- 20 right?

19

25

- 21 A. Yeah. The bulk of the research that I have in -- in 22 this chapter would demonstrate that.
- 23 Q. At the first sentence of your summary of Chapter 1 on
- 24 page 22, you're now summarizing the whole chapter. First
  - sentence, you say, "As the above discussion indicates, criminal

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justice agencies continue to be targets of civil liability," right? 2 In your acknowledgements, you say, "Many thanks to 2 3 A. That's true. 3 the various civil litigators who successfully defend criminal 4 O. Do you believe that today? 4 justice officers." You can -- I'll let you get to the Yes, I do. acknowledgements. A. Yeah, I'm aware of that statement. 6 Ω Are you bringing that into this case? 6 A. No. O. So you said --MR. LUTE: Objection. Go ahead. 8 As well as others, so let's be fair. 9 You're not? 9 Q. Oh, we will be. "Many thanks to the civil" -- "to Ο. 10 various civil litigators who successfully defend criminal 10 A. So are you bringing Chapter 1 into your case -- into justice officers and agencies in civil litigation matters. 11 11 this case, your knowledge of the information contained in the Working with them on civil cases has greatly increased my 12 12 knowledge of the civil process. Their legal skills and talents 13 whole chapter of the book you -- you wrote? 13 A. No. Did you see anywhere in 50 pages of my report 14 illustrated during discovery, motion preparation, and in the 14 where I referenced that at all? courtroom are unmatched and have enhanced my ability to write 15 15 16 Q. I just remember your answer to my first question if 16 about the many civil liability issues facing criminal justice you rely on your writings, including your books and forming practitioners." Did I read that right? 17 17 18 18 A. That's correct. A. It does, the case law. Q. Please explain to me why you included that in a 19 19 academic course book on the civil justice system. 20 Q. I'm wondering if Chapter 1 of your book is -- and --20 informs any of your opinions in this case? A. Because it's true. I mean, much of what I know or 21 21 A. All of my sum and substance of all of my career some of what I know is based on working with and learning from 22 22 23 writings, research have influence on my opinions. 2.3 litigators who we already talked about earlier in terms of 24 identifying -- I don't know -- eight or nine off the top of my O. Thank you. 24 But not specifically Chapter 1 or any chapter of this 134 Q. Any reason why you chose to not include plaintiff's 1 1 my specialized knowledge, research, training, and experiences lawyers in that acknowledgement? 2 of these practices, training various criminal justice, 2 A. I rarely get the chance to interview them. They military, and private security personnel. The following social 3 science methodologies were used to review the case documents 4 interview me. including histography." I'll stop right there. What is 5 O. Any other reason? 5 6 Q. When was the last time you worked with a plaintiff's 7 A. It is the examination of the -- of documents, videos, 7 lawver on a civil case? items of historical nature that have historical relevance to a 8 8 9 A. I think I said 1999 or 2000. 9 particular matter of fact, subject, or incident. (A recess was taken at 3:19 p.m. and deposition Q. All right. So when we say the methodology that you 10 10 use, one of those methodologies was examining the documents; is 11 resumed at 3:43 p.m.) 11 12 Q. All right. We're back on the record. We're going to 12 that right? now turn towards your opinion in this case. Do you have a copy 13 13 A. That's correct. of it in front of you? Q. Grounded theory, what's grounded theory? 14 14 15 A. Yes. 15 A. Grounded theory is taking all of the documents in

Exhibit 3 -- or the report, excuse me. And you have a copy of that looks and combines all of the collective nature of coding, 17 it in front of you. If you would, turn to paragraph Number 14 18 collecting of information, data, if you will, or incidents or of your report. The numbered paragraph on page 6. 19 documents, interviews, and based on the thematic and patterns of that to develop a particular theory or in this case, an 20 opinion or opinions. Q. All right. And just by way of background, everything 21

22 listed from paragraphs 1 to 13 is accurate; is that correct --

Q. All right. We previously marked the opinion as

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O. -- in your report? And so as it relates to Number 14 -- paragraph 14, you say your "opinions are based on 2.4 Q. In what context have you applied grounded theory in

O. Where did you learn grounded theory?

this case or other issues. It's an inductive theory, a process

I learned that at Michigan State University.

25 this case?

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- A. By looking at all of the documents that I have listed on item 16.
- 3 O. And from those items you developed a theory?
- 4 A. I -- I developed opinions.
- Opinions. Is that what you mean by "as it relates to
- grounded theory"? 6
  - A. Yes, in this case --
- 8
- 9 -- in this matter, in this incident, yes.
- O. So grounded theory would mean that you then formed 10
  - opinions after reviewing the documents; is that right?
- 12
- 13 Q. And then finally, the third piece -- or not
- finally -- the third piece you have is discourse analysis. 14
- 15

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- 16 A. Yeah, discourse analysis is the communication and
- interaction between individuals and the subject matter in terms 17
- 18 of verbalization or nonverbalization of the interactions
- between individuals or groups, or in this case, Officer Huber 19
- 20 with Officer Paris and the radio. So it's a discourse. It's
- trying to look at -- or it does look at analyzing that 21
- communication process between subjects and individuals. As the 22
- 23 name implies, discourse communication.
- 24 O. Finally, content analysis is the fourth piece of your
- methodology. What is that?

Content analysis is very similar to histography, in

- 2 that, it looks at secondary -- it's a secondary analysis of
- 3 already archival information. Much like with the case law that
- I use for the books, that's secondary or content analysis. So
- this combines all of the documents identified in item 16 for
- 6 the patterns, trends, thematic information that I was able to
- identify and develop my opinion based on the contents of all of
- the documents that are contained -- well, that were provided to
- 9 me in this case.
- Q. All right. And so for layman, let me see if I can 10
- translate this properly, and -- and tell me if I do, please. 11
- 12 Your methodology was to review the case documents, form
- 13 opinions from those documents, and from the discourse or the
- 14 exchanges that you saw that were recorded in various recordings
- 15 provided to you, and then examine the content as well -- or
- 16 analyze the content of what you reviewed.
- A. That's correct. 17
- 18 Q. Okay. This is a very long report, so we're going
- to -- we're going to zip through it in the spots that I need to 19
- 20 get through. We're going to go to Opinion Number 1. It's not
- numbered, but it's the first opinion I find, and I have it as, 21
- "In my opinion, CPD administrators have taken a proactive 22
- 2.3 approach." That's the beginning of it. Let me know when you

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- 24 see that.
- A. Are you on page 10?

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- Q. Yes. I'm sorry, the first opinion is, "The Canton 1
- Police Department administrators have not abdicated their 2
- responsibility in developing and implementing operational
- policies for their police officers, particularly on the use of 4
- force." Is that your first opinion in this case?
- Yes, it is. That's correct.
- 7 Q. And there are subopinions, and that's the one I spoke
- to. We'll get to that in a minute. You write in the second 8
- 9 full paragraph of, I believe, it is -- well, it's the first
- full paragraph at the top of this -- the next page, following 10 Number 17, as I would expect, you write, "CPD administrators
- 12 have developed and maintained operational policies and
- procedures which provide guidance to department officers." Did 13
- I read that right? 14

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- A. Yes.
- Q. Help me understand why you would expect that.
- In contemporary police departments, it's -- and 17
- currently within where we're at in -- in -- well, in this case 18
- 19 '21, '22, that it is obviously very warranted that police
- departments have policies and procedures with which to guide
- their officers in making various decisions regarding to their 21
- 22 performance, response, aspect of their duties.
- And I -- I -- you know, from my own research and
- 24 looking at this, I would expect in contemporary policing -- and
- that's what I found here -- that they do have policies and 2.5

- 1 procedures, and they're current, or at least current in terms 2 up to that date of the incident.
- Q. So you began your review of this case with the 4 presumption that they would be in compliance.
- 5 A. Yes. Or that they would have policies and procedures 6 and protocols to guide officers.
- 7 Q. I believe you've said in the past that the mission of
- a department should be in policies; is that right? 8
- 9 A. A mission statement can be with policies and 10 procedures, correct.
- Q. I believe you have also said that a policy should 11 12 articulate the management philosophy of an agency?
- 13 A. It can in the introduction or in the beginning
- portion of a policy manual. 14 15 O. And I believe you've said policies provide operations
  - an agency?
- 19 Q. And I believe you've said that policies emphasize the

to shape organizations that trickle down to form the culture of

- core values of the vision -- or operationalized vision of an 20
- 21 agency, right?

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- A. That's correct.
- 23 The difference between policy and procedure I think
  - you've spoken on, is that procedure guides the conduct of the
- 25 officer --

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any kind regarding how to deal with celebratory gunfire,

A. Yes.

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O. I understand how you read his report and we can -- we

can address that. I'm just trying to understand if you -- if

we're on the same page with respect to the allegations made in

2 -- the actions that they take? 2 correct? 3 Α. 3 A. That's correct. 4 Especially when it relates to split-second decision 4 O. If I understand your report in sum and substance, Ο. making? you're saying, however, the other provisions of the policy 6 Ά Or any other type of action. 6 address gunfire and use of force sufficient to warrant, in your O. Policies guide officer thinking, correct? opinion, the idea that as you indicated here at Opinion 1, the Canton Police Department administrators have not abdicated 9 Q. So with that said, we don't have any dispute in this 9 their responsibility in developing, implementing operational case, do we, that there is no policy or procedure in the 10 policies for their officers, right? 10 entirety of the Canton Police Department related to how A. That's my opinion, yes. 11 11 officers could prepare for or deal with celebratory gunfire, 12 12 O. Okay. And within that opinion is contained a subset 13 correct? 13 of other opinions that I think are stated here. By the way, 14 A. Repeat that, please. you cite Policies 208, 300, 302, 310, and it goes on for some 14 MR. DICELLO: Could you read that back, please? 15 15 time including body-worn camera policy and SWAT policies as you 16 (The record was read by the court reporter.) 16 state in your report, correct? O. Let me -- let me strike the question and say it a 17 17 A. Correct. 18 different way. 18 Q. And those policies, you believe, do show that the All right. There's no specific procedure in the City of Canton has not abdicated -- or its administrators have 19 19 not abdicated its responsibility to properly guide their 20 entirety of the Canton Police Department that addresses 20 celebratory gunfire, correct? office? 21 21 A. That's correct. That's a -- I would agree with that. 22 22 23 Q. And there's no specific provision in the policies or 2.3 Q. Okay. Now, so that we're clear, do you understand 24 procedures of the Canton Police Department that provide 24 plaintiff's claims in this case to mean that there's no informational guidance or a requirement for update training of quidance giving officers, no reminders given officers to start their day, not even that which would happen during roll call, the complaint? 1 1 nothing is done at all to address the phenomenon of celebratory 2 2 A. I don't recall that specifically. qunfire on New Year's Eve? Do you understand that to be part Okay. That's fair enough. I'll leave it at that. 3 The other piece of this is -- because we're going to get into 4 of the claim? 4 this -- you say that "The CPD has taken proactive steps to 5 A. As part of the claim, ves. 5 6 And do you also understand that at no point has provide their officers with the written policies, which 7 plaintiff made a claim that says officers should distinguish appropriately quide their performance in the field and to between qunfire generally as celebratory or noncelebratory? respond to a wide range of circumstances." You see that in 8 8 9 A. From your expert's report, that seems to be his 9 your report? opinion. That was my impression of reading his report. A. I don't know where you're reading from. 10 10 Q. Let me just ask again, just from the -- you've read Q. That's right below Officer Huber's testimony, which 11 11 12 the complaint? 12 you cite in --13 A. Yes. It's been a while, but yes. 13 O. I understand. And the complaint doesn't urge a Q. -- support of -- I don't know the page number here 14 14 policy that would force an officer to make that discernment in because I don't think there -- 12, there it is. Wait, wait a 15 15 training, correct? 16 minute. Let me see again. Hold on, 13. It's page 13. Do you 16 MR. LUTE: Objection. You may answer. know another opinion there? 17 17 18 A. I don't recall the wording of the complaint, the 18 A. That's my opinion of all of the information contained 19 assertion, but my impression of reading the material and 19 regarding policy and procedure. reading the expert Mr. DeFoe's report, that was the line of --Q. Right. That they had taken a proactive --20 20 of complaint in that respect regarding policy and procedure 21 21 A. Yes, I agree with that. 22 and/or training. 22 Q. -- approach?

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say, "proactive approach"?

Q. Okay. Now, what do you mean in this report when you

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- 1 A. They're not being forced; that they're a contemporary
  2 law enforcement agency understanding the utility and the need
  3 to guide officers through policy and procedure. There was not
  4 a edict or any other. It was the proper and as due course of
  5 action and due course of business to lead the department and
  6 administrate the operation of the department through policies
  7 and procedures through the administrator's own initiative.
  - Q. When you say, "not being forced," what is the -- what is the relevance of "forced"? What do you mean by that, with respect to a proactive approach to policies?
  - A. By like in some cases or in some instance or some departments, there's an incident that occurs and maybe a court induces other -- or there's other consent decree requirements or a mandate or something of that nature that's external to the department as a result of some particular lawsuit, case decision, entity, judgment, injunction, declare-- whatever.

    And that doesn't -- that's not in this case at all.
  - Q. That helps me understand perfectly, because I think you've spoken about, written about, and advocated that officers should not be reactive to critical events to change policy but that they should be forward-thinking in terms of what the policy needs are, right?
- 23 A. Yes, I'd agree with that.

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Q. Okay. And so what you're saying here is, in your opinion, the administrators were not forced by a critical event

- or other order or consent decree to establish a policy but that, instead, they did their own policy making on their own?
  - A. Correct.
- 4 Q. Okay. Now, you indicated in that spirit that CPD had 5 used -- uses Lexipol, right?
  - A. Yes.

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- Q. You -- you vouch for the reputation of the company at the bottom of the first paragraph under your word opinion of page 13. You say, "Lexipol is a reputable company." And how did you come to that? What information did you rely upon in this case to -- to make that opinion?
- A. Well, several. I know many chiefs and administrators across the country and even sheriffs that use Lexipol as a policy management system. They've been in business for some
- years now. There was, I believe, some reference to research
  that I've seen in the past, the use of Lexipol as a outside
  entity to assist and guide the departments in writing their --
- their policy. And it's not just stopping at the policy, but it's obviously having revision of the policy. And they make it
- 20 unique to the unique issues of the community and the department 21 and the state or what have you in terms of that.
- I have not seen anything negative ever written or 23 brought against Lexipol. But I find in looking at their
- 24 website prior to this case and prior to -- and -- and talking
- 25 to Gordon Graham, who is the primary individual that is the

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- impetus behind Lexipol with others, I've talked to other
  attorneys and other departments that have used Lexipol. So in
  the collective totality of all of that, I find that they're
  a -- you know, an onboard reputable entity that -- that
- provides a unique service to -- for a department.

  Q. All right. You go on to say that "The Canton administrators have addressed the reasonable use of force
- 8 consistent with Graham v. Connor," correct --
  - A. Yes.
- 10 Q. -- in your analysis? And then in the next paragraph,
  11 at the top of what is page 14 -- there we go -- that -- that
  12 Canton describes a force continuum.
- 13 A. You're on page 14 at the top?
- 14 Q. Yes, top of the 14.
- 15 A. Yes, I see that.
- Q. And you're familiar with it. You go on to say you teach it, and consistent with the principles that you outline in the previous paragraph, the second paragraph of page 14, you indicate that the policy outlines levels of resistance that a continuum would have and directs how officers should respond within that continuum, right?
- 22 A. Correct.
- 23 Q. And -- and ultimately, your -- your thought here is 24 that they have a continuum. It's flexible. They -- they can 25 use it and there -- they -- it is -- it is there in the policy

- 1 for them to know?
- 2 A. Yes. Officers are trained to it, and it's useful for guiding their response.
- 4 Q. Okay. Now, on -- essential to this case -- and I'm
- 5 fascinated by the notion that you write -- we'll see it
- 6 later -- that there's no -- you said, there's no requirement
- 7 that you could find in the literature that says that Canton had
- $\ensuremath{\mathtt{8}}$   $\ensuremath{\mathtt{to}}$  put in a specific provision in its policies and procedures
- 9 about celebratory gunfire or random gunfire as it's sometimes
- 10 referred to; is that -- is that correct? Is that a fair
- 11 statement?
- 12 MR. LUTE: Objection. Go ahead.
- 13 A. Yeah, I -- that's -- that's fair.
- 14 Q. And you -- you talk about looking at different
- 15 journals and the training and experiences you've had and have
- 16 never seen that as a required aspect of building a proper
- 17 police policy?
- A. Correct. I've not ever seen any police association,
  accrediting body, research entity, case law along that -- that
  regard at all.
- 21 Q. And you know why I think that's interesting, is that
  22 in *Canton v. Harris* when the plaintiff in that case is getting
  23 booked and she has her medical crisis, the -- the Court focused
- 24 on the complete absence of any policy around that issue, how
- 25 she was to be cared for, that sort of thing. You're familiar

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with that? A. Oh, yes. 2 And that was the seminal issue? 2 3 Q. Does the Court engage, to your understanding, of any 3 A. Correct. And there's a lot of other decisions after 4 knowledge of or assessment of whether publications or other law 4 that. enforcement require or make it a condition of a good policy --Certainly. Absolutely. Okay. So I'm trying to get 6 MR. LUTE: Objection. Go ahead. 6 an understanding then of this notion of proactive police policy O. -- in this assessment? making. You speak to that quite a bit, don't you, what it --8 I have -- I have actually seen Supreme Court what it takes to be proactive as an agency? 9 decisions to some extent, but lower court, appellate court, 9 A. Sure. decisions that do discuss a lack of a policy or not a policy or 10 Q. And you speak of assessing your -- your policies to 10 in -- or in primarily, what I have seen, that policy does not make sure that they are consistent with contemporary legal 11 11 necessarily inform a court's decision on whether force was 12 12 standards? excessive or not excessive. It's only looking at it on the 13 13 A Correct objective reasonableness of the officer's abuse of force, but I 14 O. And you talk about assessing policies for dealing 14 have also seen where policy can inform a court's decision in 15 15 with areas of concern within the department that might create 16 that regard. So in answer to your question, I think it's all 16 liability for the department? over the board in terms of court, and certainly in the Monell A. Okav. 17 17 18 decision, guides officer -- or administrators to develop 18 O. Right? appropriate policies and procedures. 19 19 20 O. You mean Monell and its progeny? 20 Q. And you -- you speak about and talk about, research, even, incidents where officers or agencies have failed to 21 A. Yes. 21 Because Monell stood for the proposition that a address needs within the department with their policies and 22 22 23 municipality can be a person --23 been subjected to liability, right? 24 A. Correct. 24 A. Correct. -- under 1983? Okay. Do you believe -- as an academic or law 149

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      enforcement professional, trainer, do you believe, given
 2
      your -- your career that there ought to be guidance given to
      officers at Canton on New Year's and 4th of July, specifically,
 4
      regarding the prevalence of and how to address or think about
      considering the totality of circumstances, celebratory qunfire?
 5
                     MR. LUTE: Objection. Go ahead.
 7
          A. No. I mean, you can't differentiate. How would you
      differentiate between any qunfire? That -- that's -- so no,
 8
 9
      they're not -- officers are not trained to differentiate,
      classify, categorize. And I think the administrators that I
10
      read opine on that quite -- quite articulate. That would be
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12
      negligence on their part to try to tell an officer to make any
      distinction or differentiation between any type of gunfire,
13
      which would necessarily render that officer, I think, unsafe in
14
15
      their response.
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                So to try to say, "Well, that's just July 4th
      gunfire," gunfire is gunfire. And that's how officers are --
17
18
      are trained to investigate gunfire, not to make it a
19
      differentiation between whether it's of a celebratory nature.
      And how -- how would an officer know that? That -- that's I
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think a key and core and critical issue to try to -- well, this

birthday? Is it their wedding? Is it their anniversary? So I

think that's -- that's almost impossible to do, and I don't

is just celebratory. What it birth-- is it somebody's

think that would be good policy or good training.

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           Q. In your report, you speak of certain things that
 2
      we'll talk later about it that may have been in the mind of
      Huber as he responds to the house. Do you remember that line
 3
 4
      of reasoning in your opinion --
          A. Oh, yes.
 5
 6
               -- your report?
 7
           A. Are you -- are you specifically -- can you give me
 8
      specifics on that?
 9
               Sure. The notion that he was responding to shots
      fired with knowledge that other shots had been fired earlier in
10
      the day involving officers and that sort of thing?
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12
           A. Yeah, prior to his shift.
13
           A. He was told at roll call -- and he actually went to
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those, at least one location, to check that out -- that there

were wounded or perhaps killed. I'm not sure. So that would

had been a homicide or shootings that involved subjects who

be top of his mind, as well as the volume intensity cadence

19 of -- of the firearm that was being shot. Q. Now, to be fair, he didn't testify that that was top 20 of his mind? 21 22 A. Well, I would say -- okay. It's my language, but it

would be in his thinking. 23

24 Q. If he didn't testify that that was in his thinking, 25 would be respond --

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- A. I believe I saw that it was. given day. Now, if they did that, that's fine, but not doing 2 That he was thinking about that as he responded to 2 it certainly doesn't, to me, smack of any negligence or 3 the shots being fired? 3 deliberate indifference or any problem of advising an officer. 4 A. That coming on the heels of those two incidents prior I mean, that's part and parcel being an officer, being safe, to his shift, I think was in the background of his -regardless in his shift or her shift, as the case may be. 6 O. Well, he was --6 Q. Well -- and in fairness, you're -- you're not here to A. -- his thinking. decide what is deliberately indifferent? -- I think he testifies he's aware of --A. That's correct. 9 Yeah, he's aware of it. 9 Q. Right. Okay. So my -- my question was a little O. -- okav. 10 different. Would it be prudent from a law enforcement 10 procedural standpoint for officers to be advised on the fact 11 Δ Sure 11 that 4th of July, New Year's is going to be a time when we're 12 O. Fair enough. And so we're on the same page. Would 12 13 it be useful for him to also be aware of it being 13 going to be hearing a lot of shots fired? New Year's Eve? MR. L'HOMMEDIEU: Objection. 14 14 MR. LUTE: Objection. Go ahead. 15 A. Could be. 15 Q. Would it be useful for him to -- and -- and helpful 16 16 I'm not going to say it's not prudent, but I don't for his safety and the safety of Mr. Williams -- to be reminded 17 think it would be necessary. 17 18 at roll call, not only of the murders that took place but of 18 Q. Different issue. Is it -- would it be prudent? the prevalence of gunfire today, which it's New Year's Eve, and MR. LUTE: Objection. 19 19 It wouldn't be imprudent. 20 we're going to experience a lot of qunfire, and so let's 20 exercise extreme caution, that sort of thing? 21 Q. So therefore, it would be prudent? 21 MR. LUTE: Objection. Go ahead. It would be, but I'm just saying that that's not 22 22 23 O. Would that -- would that be prudent? 23 going to be the normal course of -- of the day. 24 A. I -- I mean, it's possible, but I don't think that's 24 O. I agree. But in being pro--I'm not saying that it's -- I'm not going to argue going to be part of the roll call on any given time or any 1 with you that -- in terms of that, but I'm saving that as a 1 O. Okav. And when we think of the kinds of tactics or
- normal course of roll call, that's probably not going to occur.

  And I'm saying that doing that is not increasing some -- an officer's safety by not saying that.

  Q. So when we think of being proactive and addressing the needs of an agency on a given day or at a given time, we know the record shows that officers were informed of a murder or series of violent acts prior to the start of Huber's shift, correct?

  A. Correct.
- 11 Q. But there was no mention made that Huber's shift
  12 would be encountering potentially innocent civilians firing
  13 their guns for celebratory purpose, right?
- 14 A. That's correct.
- 15 MR. LUTE: Objection.
- 16 Q. Okay.
- 17 MR. LUTE: Go ahead.
- 18 A. That's --
- 19 Q. And so -- and -- and it would be prudent for them to
- 20 be so advised. That's fair?
- 21 MR. L'HOMMEDIEU: Objection.
- 22 MR. LUTE: Objection.
- 23 A. Again, I'm going back to saying that I don't think
- 24  $\,$  it's necessary. I'm not saying it's not prudent. I'm just
- 25 saying it's not necessary.

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practices that could be recommended or suggested to deal with
 2
      celebratory qunfire from both a policy standpoint or
 3
      administrative standpoint on New Year's Eve, are you aware of
 4
 5
      any agencies in America that have implemented tactics or
      implemented staffing or patrol variations in light of
      New Year's or 4th of July?
                     MR. LUTE: Objection. Go ahead.
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 9
           A. Using the words "celebratory gunfire" and -- and in
      my impression, in my -- and -- all of my report, I don't think
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      there is such a thing. It's gunfire. So to try to
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      differentiate, again, and categorize, classify one level of
      firearm discharge to another to try to address a policy or
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      training in the question that you've asked about a different
14
      department, I don't know how you can differentiate that. So in
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16
      terms of celebratory gunfire, there's gunfire and that --
      that's it.
17
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           Q. So you're not aware of any agencies in the -- in the
19
      United States that have changed their practices to keep safer
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their officers or the public on New Year's or the 4th of July

A. Again, not on celebratory gunfire. On gunfire.

A. Not on celebratory gunfire, as you keep using the

MR. LUTE: Objection. You may answer.

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in light of celebratory gunfire; is that right?

O. I'm sorry?

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- term. I've not seen a policy or a practice or a tactic where
- 2 that addresses celebratory qunfire.
- 3 Q. You've never seen a policy or practice that directs
- 4 officers to change their ordinary patrol behavior with respect
- 5 to New Year's or 4th of July?
- 6 MR. LUTE: Objection. Go ahead.
- 7 MR. L'HOMMEDIEU: Objection.
- 8 A. I've never seen that.
- 9 Q. Are you familiar with the City of Phoenix and what it
- 10 went through in that regard?
- 11 A. Maybe limitedly in terms of PSAs to the community,
- 12 but I don't recall ever seeing anything specific in a policy or
- 13 procedure to officers on celebratory gunfire.
- 0. All right. We'll get back to that. Thank you for
- 15 your answers. I appreciate it. You advocate in your lecturing
- 16 and teaching that agencies should assess their policies by
- 17 asking what you have previously identified as essential
- 18 questions. Are you familiar with that part of your -- your
- 19 lecture
- 20 A. I'm not sure what  $\operatorname{--}$  if you could be a little more
- 21 specific.
- 22 Q. We can be.
- 23 MR. DICELLO: Joe, if you would pull up
- 24 Exhibit 21. It's going to be the October 29th, 2020, video.
- 25 Stop right there. Don't play it.

- 1 Q. (Continuing) We're showing you the first frame of
- 2 this roughly one-minute long video. Do you recognize this
- 3 slide?

6

- 4 A. Ye:
- 5 O. Did you make this slide?
  - A. Yes.
- 7 O. And it's called -- it's titled, "Essential
- 8 Questions," right?
- 9 A. Correct.
- 10 O. And you believe that these are the essential
- 11 questions that agencies should ask in order to assess whether
- 12 their policies are -- how do you say it? -- addressing their
- 13 needs
- 14 A. This are among -- among these that are listed here
- 15 among others, but yes.
- 16 Q. One of the questions is: "Have you assessed high
- 17 liability issues and addressed them through policy?" You see
- 18 that third question?
- 19 A. Yes.
- 20 Q. So here we sit in a case over a person being -- my
- 21 client being killed by an officer in an officer-involved
- 22 shooting on New Year's as he was shooting guns into the air.
- 23 You would agree with that?
- 24 A. Yes.
- 25 Q. And the liability issues surrounding that event is

- 1 real? It's currently before us today?
- 2 A. Correct.
- 3 Q. Okay. Are you aware of any assessments that the
- 4 City of Canton has ever done with respect to the number of
- claims that it gets for -- or calls for service that it gets --
- 6 excuse me -- that it gets regarding celebratory gunfire?
  - A. No.

7

17

- 8 Q. Are you aware of any assessment ever done by the City
- 9 regarding how many claims for service or calls for service it
- 10 gets for -- I don't know -- noise or other complaints regarding
- 11 celebratory or random gunfire on New Year's or the 4th of July?
- 12 A. I've not reviewed any data.
- 13 Q. Have you --
- 14 A. I don't know.
- 15 Q. -- have you been given any data or seen any data that
- 16 the City regularly kept or keeps for that purpose?
  - A. No.
- 18 Q. You are familiar with the fact that they had
- 19 ShotSpotter at one point?
- 20 A. Yes
- 21 Q. Did you review any ShotSpotter documents or
- 22 documentation?
- 23 A. No
- 24 Q. Did you -- were you provided any data regarding
- 25 ShotSpotter gunfire statistics or gunfire hot spots that

- 1 ShotSpotter would or would not have created?
- 2  $\,$  A. No. I do recall testimony and that the system was
- 3 not very accurate or working and they abandoned it, but I've
- 4 not seen any data.
- 5 Q. Are you aware of any research on ShotSpotter or
- 6 similar technologies and that their rate of effectiveness has
- 7 been shown to be, according to certain published journals,
- 8 in --
- 9 A. No, no.
- 10 Q. Have you ever examined the issue yourself in your
- 11 academic research or in your work for officers as a trainer?
- L2 A. No
- 13 Q. You also say that how frequently are the agency
- 14 employees trained in the policy manual. Were you given any
- 15 data as to how frequently agency employees at Canton were
- 16 trained in the policy manual?
- 17 A. Data?
- 18 Q. Yeah.
- 19 A. No. I was -- I was given and provided records of
- 20 training. I reviewed the testimony of the administrators and
- 21 Officer Huber, who indicated in their testimony -- and I think
- 22 I've got it identified in my report -- that was on an ongoing
- basis to review policies and procedures. And with the Lexipolmanagement system, policies were revised on a regular basis.
- 25 Q. Do you -- do you -- and I appreciate that. I agree

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```
that's in your report as well. Do you have any data or
                                                                                           New Year's or 4th of July?
      information as to the frequency -- as you quote here, an
                                                                                      2
                                                                                               A. I didn't review any of that data.
 3
      essential question -- the frequency at which agency employees
                                                                                     3
                                                                                                   Did you see any?
 4
      were trained?
                                                                                                    No
                                                                                               Α.
          A. At least annually. Trained to policy and procedures,
                                                                                                    Was any given to you?
      that's what --
 6
                                                                                      6
                                                                                               A No
          O. Yes.
                                                                                               O. Was there any assessment process or third parties
              -- you're asking, right?
                                                                                           contracted to help in that assessment of their policies, as far
 9
          O. Yes.
                                                                                     9
                                                                                           as you know, aside from Lexipol, who you've testified to today?
          A. At least annually. And that was Huber's testimony,
                                                                                     10
                                                                                               A. Not in my knowledge.
10
      and the record showed that as well, as I recall.
                                                                                               Q. Are you familiar with them hiring any consultants to
11
                                                                                     11
          Q. Okay. Did you get any information or data that
                                                                                           do that work to assess or take a risk management approach to
12
                                                                                     12
      showed that the policy training -- any data or information
13
                                                                                    13
                                                                                           their policy?
      showing that the policy training actually matched field
                                                                                    14
                                                                                               A. No. Other than through Lexipol with their
14
15
      performance?
                                                                                     15
                                                                                           subject-matter experts.
          A. No.
16
                                                                                     16
                                                                                               Q. And when you say, "Lexipol," let's be clear. Lexipol
                                                                                           provides copies of the policies to be downloaded for usage at
          O. What monitoring and assessment process had the
17
                                                                                     17
18
      City of Canton developed in 2022 or into 2021 regarding -- you
                                                                                    18
                                                                                           the department, correct?
      know, the end of '21 into '22 -- regarding officers responding
                                                                                               A. Correct. As well as in concert with writing with
19
                                                                                     19
      to celebratory gunfire?
20
                                                                                     20
                                                                                           administrators of that department.
          A. Again, you keep using that -- that term, that word,
                                                                                    21
                                                                                               Q. Right. Helps them write the policy?
21
      that concept, and I didn't see any on celebratory qunfire.
22
                                                                                     22
23
          Q. What monitoring and assessment process did they
                                                                                    23
                                                                                               O. Yeah, actually draft it --
      develop to assess areas of hotspots where random gunfire would
24
                                                                                    24
                                                                                               A. Yes.
      be more visible or obvious or noted on a holiday such as
                                                                                                    -- from the -- from the model policies that Lexipol
```

```
1
      creates?
 2
          A. Correct.
 3
 4
          A. Unique to the situation and issues of that
 5
      department.
 6
          Q. Do you know if anyone has ever asked Lexipol to
 7
      create a policy unique to the events, the gunfire phenomena,
      that would occur on New Year's or 4th of July?
 8
 9
                     MR. LUTE: Objection. Go ahead.
          A. Not to my knowledge.
10
          Q. Did you ever -- did -- were you provided any
11
12
      information at all that the City had ever reached out to
      Lexipol to address that issue?
13
          A. I'm not aware of that, no, not to my knowledge.
14
          O. Are you familiar with officers in some jurisdictions
15
16
     hiding under bridges on 4th of July or New Year's to avoid the
      perils of celebratory gunfire?
17
18
          A. No --
19
          Q. Never heard --
20
              -- no, sir.
          O. -- never heard -- I'm sorry?
21
22
          A. No, sir.
                     MR. DICELLO: All right. Joe, play the -- play
24
      the video, please. Can't hear it, Joe.
```

{Playing of video started.}

2.5

```
1
                     MR. DICELLO: You got to do it again.
 2
      {Playing of video stopped.}
                     MR. FOUCHÉ: Start it over?
 3
                     MR. DICELLO: Yes, sir, we couldn't hear it.
 4
      {Playing of video started.}
 5
 6
      {Playing of video stopped.}
 7
           Q. All right. Does that refresh your recollection as to
      what you said on October 29th, 2020, with regard to how
 8
 9
      agencies can assess their policies?
10
          A. Yes, yes.
           O. Do you still hold the beliefs and views expressed in
11
12
      that recording?
13
           Q. Okay. In your 2006 article -- I'm referring to
14
      Exhibit 11 that we spoke of earlier -- you wrote at page 40,
15
16
      "Many police executives have taken proactive measures by
17
      implementing a risk management program within their
18
      organization." That's consistent with how you actually
19
      advocate today and teach today, right?
20
          A. Correct.
21
           Q. And in that space, are you aware of any risk
22
      management programming at the City of Canton?
           A. I would say that there's evidence of it. I don't
23
2.4
      know that they've embraced a total risk management system as a
```

risk manager on the department or through the law office. But

163

2.5

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- 1 it's certainly, as it applies to this case, shown me that
  2 there's evidence of risk management in the policy management
  3 system that they're using through Lexipol, one.
  4 Secondly, officers, in particular Officer Huber in
- this case, was provided access to them, to the policies through
  the database. And thirdly, provided training on an annual
  hasis. So to me --
- Q. What --
- 9 A. -- to me, that's a demonstration of a risk management 10 process, a portion on use-of-force management, particularly
- 11 with policy and training.
- 12 Q. Is that all the aspects of a proactive management 13 response in your view? Is that what that requires?
- 14 A. I wouldn't say it's all, but it's a piece of it.
- 15  $\,$  Q. What is the -- who are the individuals of the City
- 16 that conduct the risk management program there?
- 17 A. I said I don't know that there is one. I'm saying 18 this is evidence of a slice that could be part of a risk 19 management system.
- 20 Q. Well, I don't want you to speculate. I want you to speak from the knowledge that you have from the documents and involvement in the case. Okay? So -- okay?
- 23 A. Yes.
- 24 Q. Okay. So who runs a risk management program at
- 23 Calicoli:

2

4

9

A. I don't know of anyone.

- ${\tt Q.}\quad {\tt Q.} \quad {\tt Who \ has \ ever \ participated \ in \ or \ conducted \ any \ risk}$
- 3 management oversight at the City as far as you know?
- 4 A. I don't know of anyone. It doesn't mean it's not there. I'm not aware of it.
- 6 Q. All right. I understand. With respect to the
- 7 proactive management response that an agency can have, have you
- 8 seen any evidence of officers or administrators of the City
- 9 tracking citizen complaints?
- 10 A. I've not been provided that information. I'm sure 11 they do, but I've not seen it.
- 12 Q. You've never been provided a single citizen complaint
- 13 regarding random or celebratory gunfire?
- 14 A. No.
- 15 Q. Do you know that the day after my client was killed,
- 16 that is, January, later in the day -- I should say of
- 17 January 1st -- there was a police report made regarding
- $18\,$   $\,$  celebratory gunfire on 10:00 a.m. that morning. Did you see
- 19 that --

20

- 21 Q. -- in your -- you were not provided that?
- 22 A. I don't know who you're talking about or what you're
- 23 talking about.
- Q. Okay. And just so that we're clear, you were never given any -- any police reports, any incident reports, any
- 20 given any any porree reported, any increase reported,

165

- 1 calls for service, documentation, or information about this -
  - regarding this case, except for that which involved
- 3 Mr. Williams alone; is that right?
  - A. Those are the documents I reviewed, yes.
- 5 Q. All right. So do you have any knowledge or
- 6 information as an expert here today that the City of Canton
- 7 tracks citizen complaints in an effort to reduce potential 8 problems for the City?
- 8 problems for the City?
  - A. I'm not aware of that.
- 10 Q. At page 55 of your 2006 article, you indicated,
- 11 quote, Tracking citizen complaints is a proactive management
- 12 response, which may be useful in improving employee conduct and 13 reduce potential problems from occurring.
- 14 Do you agree with that statement?
- 15 A. Yes. That's one -- that's one of many factors or 16 components.
- 17 Q. And so let's go now to your report regarding the
- 18 performed research that you did -- the research you performed
- 19 on celebratory gunfire. I'll find that spot here. Let me see.
- 20 All right. Page 15, you say -- in the middle of the second
- 21 paragraph or so, after laying out the instruction and so on 22 that you've given to graduates regarding policies and the
- 23 criminal justice system -- you say, "I have also performed
- 24 legal case research specific to law enforcement agency policy
- 25 development through West Law, dating back to 1989."

- 1 And you cited the Department of Justice, Special
- Litigation Division's publications from 1997 to '22 -- 2022
- 3 comprising federal consent decrees. And you say, "The research
- 4 did not produce a specific source or document, which" -- here's
- 5 the language -- "directs or infers that a law enforcement
- 6 agency is required to develop or train officers, and/or to
  - implement a specific policy designed to guide an officer when
- 8 responding to an incident of alleged 'celebratory gunfire.'"
- 9 Did I read that correctly?
- 10 A. Yes.
- 11 Q. Is that still true today? You -- as you sit here
- 12  $\,$  right now, you have no -- you have found no -- not a specific
- 13 source or document even which directs or infers the need to
- 14 respond to an incident of alleged celebratory gunfire?
- 15 A. I've not seen -- seen it. And that's consistent with
- 16 what I know today in terms of that statement, nor does -- on
- 17 the same page -- State of Ohio have a model policy in that
- 18 regard.

19

2.4

- Q. You are familiar with the IACP Police Chief magazine?
- 20 A. Yes
- 21 Q. And that's the International Association of Chiefs of
- 22 Police?
- 23 A. Correct.
  - Q. Are you familiar with their report on random gun

168

25 violence in Phoenix?

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I haven't read it in a while. doing well here. One second. Off the record. 2 Have you ever read it to your knowledge? 2 (A discussion ensued off the record.) Q. So here's 22. It's going to display properly now. 3 I don't -- it's been a while. 3 4 Q. Let's pull it up. This is the beginning of the 4 So I showed you the beginning pieces from the International article. We're going to pull up the entire article, but do you Association of Chiefs of Police and how it cites to the Police Chief, Professional Voice of Law Enforcement journal of 6 see the -- on the page -- let me see if I can get this right. 6 There we go. Okay. What is going on with this thing. Oh, August 2010. Do you see that document? it's so frustrating. There we go. 9 This is just a reference to the article which allows 9 Q. All right. Now, let me see if I can get the right you to link on it. I'm showing it to you as it's presented page. There it is, 78 of the journal, 66, almost there, 70, 10 10 online. It says, "Faced with a growing epidemic of random 11 74. There we go. And finally, page 78 of the Police Chief 11 celebration gunfire during holidays, the Phoenix Police journal's edition contained in Exhibit 22, we see the full 12 12 13 Department said, 'Enough is enough.' It began combating this 13 article and we're going to go through it. problem with an unusual, if not unique, two-pronged approach." 14 The -- as you -- as you understand, Phoenix Police 14 Does that ring any bells? 15 15 Department named the reduction of random oun violence a top A. No. priority back in 2003. Are -- are you aware of that? 16 16 MR. L'HOMMEDIEU: I mean, we can't -- is this 17 17 Α. No. 18 an exhibit? We can't see it. 18 Are you aware of Shannon's Law? MR. DICELLO: I'm going to show it to you, 19 19 No. 20 yeah, one second. I apologize, I'm having some technical 20 Have you ever studied the Department of Phoenix -difficulties with showing things here. Can you see it now? how the Department of Phoenix conducted Shannon's Law of 21 21 MR. L'HOMMEDIEU: Yeah, I would see a -- yeah. Operations each New Year's Eve and New Year's Day? 22 22 23 MR. DICELLO: Okav. 23 A. No. Q. Are you familiar with it -- the first year of their 24 O. All right. Now we're going to go to the -- oh, 24 goodness gracious. I apologize to everybody. I'm just not 25 operations brought an 18 percent reduction in qunfire

171

170

```
1
      throughout the city?
 2
          A. What was their operation?
              First, are you familiar with --
 3
 4
           A. No. But I want to know what the operation was.
      You've read the article. I have not, so --
 5
 6
              Well --
           A. -- you're asking me questions, which I have --
 7
          O -- what did --
 8
 9
           Α.
               -- no regard to.
              I understand, and I appreciate that. So there's an
10
      education phase where they --
11
12
          A Of whom?
13
          O. Pardon me?
14
          A. An education phase of whom?
15
          O. The Phoenix Police Department. It's called their
      Shannon's Law Operations. It says they're broken down into two
16
      phases, education and enforcement, says the article. Are you
18
      familiar with that?
19
              The education, that phase of, found officers working
20
21
      with nonprofit organization, Arizonans for Gun Safety. And
22
      they, at that time, children in kindergarten through eighth
      grade are invited to participate in a stop random gunfire
23
24
      poster billboard contest. Are you aware of anything like that
```

25

in Canton?

```
1
           A. No. And I don't see how this has to do anything
 2
      with -- with a policy.
           Q. Okay. From an enforcement standpoint, it says, "The
 3
 4
      education phase transitions into the enforcement phase.
 5
      Operations on New Year's Eve as 12 midnight approaches and
      qunfire begins to occur, the enforcement team transitions their
      roles from educators to enforcers. They stop passing out
      flyers and begin to hunt for violators. The team is positioned
 8
 9
      themselves in their assigned zones where they can see violators
      shooting and move in to safely arrest them." Are you familiar
10
11
      with any of this?
12
           A. No. This to me smacks of a public safety
      announcement with officers working with school children and
13
      others in the community like they normally do on other projects
14
      to try to reduce gunshots. And when they do hear what I'm
15
      seeing up there -- I've not read the article, just listening to
16
      you -- when they hear it, they go arrest people, which is a
17
      good thing. But I don't see any directive by the IACP with
18
19
      this article that says here's a model policy on this issue. In
      fact, there is not one on their policy research center because
20
      I've checked
21
22
           O. Granted, there's no model policy by the IACP or
23
      Lexipol. We agree with that? Okav?
2.4
           A. Yes, sir.
25
           O. You are aware that Phoenix uses teams of officers --
                                                                172
```

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as I read it to you just now -- they use teams of officers
                                                                                                    No. What I'm saying, is that they have a policy
      stationed where the gun -- where and when the gunfire occurs to
                                                                                      2
                                                                                            management system through Lexipol that addresses pertinent
 3
      respond to gunfire on New Year's Eve?
                                                                                      3
                                                                                            issues and policies within the City of Canton like numerous
 4
          A. That's what they do in Phoenix.
                                                                                            other law enforcement departments across the United States.
                                                                                            And somehow -- I think what you're trying to do -- my
 6
          A. That's one example.
                                                                                      6
                                                                                            impression of your question in showing me this article is
          O. That would be an operational change as it relates to
                                                                                            somehow can't missed it with this article that they should have
 8
      the City of Canton that could have been implemented
                                                                                            been doing this. And I disagree with that --
 9
      correctly --
                                                                                      9
                                                                                                Q. Well, no --
                     MR. LUTE: Objection.
                                                                                     10
                                                                                                A. -- because there's not a requirement here and there's
10
          Q. -- in 2002, right?
                                                                                            no mandate. There's no recommendation by the leading
11
                                                                                     11
                                                                                            International Association Chiefs of Police, but what I do find
12
                                                                                     12
13
                     MR. LUTE: Objection. You may answer.
                                                                                     13
                                                                                            on page 15, is that Canton wrote their policies consistent what
          A. No, I don't agree with that at all. This is one
                                                                                            was required in Ohio that did not address this. So they're
14
                                                                                     14
      article, one department's experience. There's no mandate here.
                                                                                            uncompliant with the criminal justice system -- or justice
15
                                                                                     15
      There's no requirement. That's how they responded. That does
                                                                                            services in -- in Ohio, vis-à-vis the Attorney General's
16
                                                                                     16
      not mean that we transfer that to all 18,000 police departments
                                                                                           Office
17
                                                                                     17
18
      and sheriff's departments in the United States.
                                                                                     18
                                                                                                Q. And I -- and I appreciate that. First of all, just
           Q. Okay. I -- I appreciate what you're saying, but
19
                                                                                     19
                                                                                            to be clear, I'm showing you this because you wrote you have
      I'm -- I'm trying to understand it. Are you saying that the
20
                                                                                     20
                                                                                            never -- how'd you put -- your research did not produce a
      only policies and procedures that the City of Canton ought to
                                                                                            specific source or document, which even infers that a law
21
                                                                                     21
      use are those that are mandated by some law agency's
                                                                                            enforcement agency is required to develop or train officers.
22
                                                                                     22
23
      understanding of the law?
                                                                                     23
                                                                                            Here, we have an agency that not only made that decision, but
                                                                                            came up with a -- a proactive approach to keep officers safer
                     MR. LUTE: Objection. You may answer.
                                                                                     24
24
                     MR. L'HOMMEDIEU: Objection.
                                                               173
                                                                                                                                                     174
          A. I just --
                                                                                      1
                                                                                                O. It's published by them.
 1
 2
                     MR. LUTE: Wait, hold on, wait for the
                                                                                      2
                                                                                                A. It's published, but it was not written by them.
                                                                                           There's a big difference.
 3
                                                                                      3
 4
          O. Are you aware -- and you weren't aware of that,
                                                                                      4
                                                                                                O. And do you believe that their journal that they
                                                                                            publish is a authoritative journal in your field?
 5
      correct?
                                                                                      5
 6
          A.
               Correct.
                                                                                       6
                                                                                                    I -- I wouldn't say authoritative. That -- it's not
 7
          Ο.
               Okav.
                                                                                            peer reviewed either.
          A. But there's -- but it goes to what I state in my \ -\! -\! -
                                                                                                O Ts it --
                                                                                      8
 8
 9
      my report.
                                                                                      9
                                                                                                    It's practitioners writing articles. And from time
          Q. Yes, which is?
                                                                                            to time, there are attorneys who write legal articles and that
10
                                                                                      10
          A. There's no requirement. There's no mandate.
                                                                                            type of thing. So it's not a peer-reviewed journal article of
11
                                                                                     11
12
          Q. Right. So let's --
                                                                                     12
                                                                                            publication.
           A. So this is a police article from a department, not
13
                                                                                     13
                                                                                                 O. Did you -- and in preparation of your report, did you
      something that's a model policy recommended or suggested.
                                                                                            actually look through IACP's publication for any -- as you put
14
                                                                                     14
      That's the big difference here.
                                                                                            it -- any articles?
15
                                                                                     15
          O. And so --
                                                                                     16
                                                                                                A. Yeah, I did.
16
               We can't make a quantum leap from that article to now
                                                                                     17
                                                                                                    Okay. And this article doesn't issue a mandate, does
17
18
      to a required or recommended policy, vis-à-vis IACP, in which
                                                                                     18
19
      this was published.
                                                                                     19
                                                                                                A. It doesn't even offer -- yeah, you're correct. It
```

Q. So understand -- I want the record to be clear -- I'm

not saying that this says all agencies, all 18,000 of them,

should or must do that, but I am asking you if finding this

article by the IACP, which you believe is a credible

A. This article is not by the IACP.

20

21

22

23

24

2.5

organization, right?

175 176

doesn't offer a recommendation either.

A. Well, show me where it says it.

Well, we'll -- we'll get to that. My -- but

before -- I just want to make sure that we're communicating,

because what I understand is, what's important to you, is that

O. You haven't read it?

20

21

22

23

24

2.5

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it's not there.

there be a mandate in order for Canton to be, in your opinion,

that. I don't know of any law enforcement association, entity,

General's Office says, you know, you need to develop a policy

O. Well, to be fair, there's no outside agency that

and training on this particular issue. You can't quantify

or the Department of Justice or even the Ohio Attorney

knows Canton better than Canton knows itself, right?

18

19

21

22

23

24

2.5

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at fault for not putting a celebratory gunfire provision in
                                                                                      2
                                                                                                Q. Yeah. Okay. That's all --
 3
      their policies?
                                                                                      3
                                                                                                A. That's all I'm saying.
 4
          A. A mandate or a recommendation from any of these
                                                                                                Q. -- that's all stated in your report?
      entities that I referenced on page 15, including IACP, Lexipol,
                                                                                                     Yes, sir.
 6
      PERF, PowerDMS, American's for Elective -- Effective Law
                                                                                      6
                                                                                                Q. Okay. So without the City doing an assessment or a
      Enforcement, or even the DOJ for that matter with their special
                                                                                      7
                                                                                           risk management review that's known to you, let's assume for a
 8
      -- my -- my concern is that you're trying to use this article,
                                                                                            second that the City evaluates what's happening on the streets
 9
      2010, that's just an article published in the magazine of the
                                                                                      9
                                                                                           and decides that, you know, New Year's, 4th of July, we should
      IACP. If this was such a prominent issue, why wouldn't the
                                                                                     10
                                                                                           maybe warn citizens to stay safe. Would that be evidence of
10
      IACP -- and this is what I looked at -- made it a model policy
                                                                                            some knowledge on the part of the City that there's a real
11
                                                                                     11
      to address that, that might guide chiefs to consider that? We
                                                                                           problem in the city with respect to this gunfire?
12
                                                                                     12
13
      don't have that here.
                                                                                     13
                                                                                                           MR. L'HOMMEDIEU: Objection.
               Secondly, the DOJ doesn't even address this in any of
                                                                                     14
                                                                                                           MR. LUTE: Objection, go ahead.
14
      the consent decrees that I've ever read. Talks about a whole
                                                                                                A. If you're asking me -- first of all, I don't know if
15
                                                                                     15
                                                                                           there is a risk management. We've already identified that.
16
      host of other things that we've talked about today, but
                                                                                     16
      certainly not -- and there's, thirdly, I've not seen anything
                                                                                           I -- I don't know. There may be. I -- I'm not privy to it, so
17
                                                                                     17
18
      that quantifies how an officer can distinguish, differentiate
                                                                                     18
                                                                                           I don't -- didn't look at any data. I've not been retained or
      between gunfire and celebratory gunfire with which you would
                                                                                            asked or requested, "Oh, by the way, create another opinion on
19
                                                                                     19
      even provide a policy statement or a policy.
                                                                                           our risk management process." It may happen.
20
                                                                                     20
               And thirdly -- or fourthly, wherever we're at -- in
                                                                                     21
21
                                                                                                    But again, you'd have to look at the issues that are
      reviewing the Office of Criminal Justice Services out of Ohio,
                                                                                           of a frequent nature, and that's how we begin to -- how I train
22
                                                                                     22
23
      if that was the big problem, certainly in their 12 sections of
                                                                                     23
                                                                                           and have always looked at suggesting a policy or procedure.
                                                                                                Q. So if there's something frequent in nature that would
      policies, that would have been addressed. I didn't see that
                                                                                     24
24
      there. It's not there. It's not that I didn't see it there,
                                                                                     25
                                                                                            put the public at risk and that would include celebratory
                                                                                                                                                     178
      qunfire and the City had actually issued a press release about
 1
                                                                                      1
                                                                                                A Correct
 2
      it, that would be important to you?
                                                                                      2
                                                                                                Q. Okay.
                     MR. LUTE: Objection.
 3
                                                                                                     But --
 4
          A. It may be. To do a public service announcement, I
                                                                                                O. Hold on a second.
      don't see any problem. I don't have a problem with that, but
                                                                                      5
                                                                                                A. -- but -- but -- but let me -- can I --
 5
 6
      like everything else, people are going to abide by what they
 7
      want to abide by.
                                                                                                           MR. LUTE: Wait for the question.
          O But it would -- it would --
                                                                                                Q. Let me just finish my question and -- and make the
                                                                                      8
 8
 9
          A. In terms of, you know, buckle up with your seat belt
                                                                                      9
                                                                                           question. In light of the fact that Canton can know itself,
      and how many people don't -- you know, don't drink and drive --
                                                                                           I'm not asking you to consider a mandate found in a public
10
                                                                                     10
                                                                                           service announcement. What I'm asking you, is does the
      public service announces, particularly around holidays, don't
11
                                                                                     11
12
      drink and drive, and how many -- and we're going to make a lot
                                                                                     12
                                                                                           evidence of a public service announcement indicate that the
                                                                                           City would be aware of conditions on the ground that officers
13
      of issues out there on that, because that's a very dangerous --
                                                                                     13
      so -- but people don't always abide by public service
                                                                                           might need to be reminded of or even trained on? Could that be
14
                                                                                     14
                                                                                     15
                                                                                           evidence of such a thing in your experience?
15
      announcements.
               I'm not saying it's not something that you might want
                                                                                     16
16
      to consider, but I'm talking about now, in terms of what I put
                                                                                     17
                                                                                                           MR. LUTE: Objection. Go ahead.
17
      in my report, and I stick with it. I'm not deviating from
                                                                                                    -- I don't think so, but it's not my experience. No,
```

179 180

So have you seen any public service announcements in

this case from the City of Canton to the public regarding

that wouldn't be.

celebratory gunfire? A. In this case?

O. Yes.

A. No.

18

19

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```
Q. No one's ever provided to you anything that was
                                                                                     1
                                                                                                     And if it was issued to the public as a warning,
      published shortly after my client's death?
                                                                                      2
                                                                                           ought it have been made to the officers in roll call that
 2
          A. You said, "in this case"?
 3
                                                                                     3
                                                                                           there's going to be celebratory gunfire? Could that have --
 4
          Q. Yes. Has everything provided to you in this case?
                                                                                      4
                                                                                           should that have been happening at the City of Canton?
               You're talking about in this case and prior to this
                                                                                               A. I don't know --
 6
      case, no.
                                                                                     6
                                                                                                          MR. LUTE: Objection. You may answer.
          O. Have you seen anything from July of 2022 after my
                                                                                                          THE WITNESS: I'm sorry.
 8
      client died that went out by Chief Gabbard that explained the
                                                                                      8
                                                                                                     (Continuing) I don't know that it wasn't happening,
 9
      dangers of celebratory gunfire? Have you seen that PSA?
                                                                                     9
                                                                                          because I didn't see evidence one way or the other.
                     MR. LUTE: Objection. You may answer.
                                                                                     10
                                                                                               O. Different question.
10
              I don't recall seeing that.
                                                                                                    But again --
11
          Δ
                                                                                     11
                                                                                               Δ
12
          O. Okay. Were you provided it?
                                                                                     12
                                                                                                    Different question.
13
          A. I don't recall seeing it, so I don't know.
                                                                                     13
                                                                                               Δ
                                                                                                    -- to answer your question.
          O. Okay. Did you list it in your report?
                                                                                                    It's a different answer to my question. You didn't
14
                                                                                     14
           A. Let's look. I've got numerous newspaper articles.
15
                                                                                     15
                                                                                          answer my question, though, if I may.
      If it's in that, I don't recall it. But I don't recall a
                                                                                               A. Well --
16
                                                                                     16
      specific document that gets to what you're talking about. No,
                                                                                               O. Did -- I'm saving --
17
                                                                                    17
18
      I don't recall that at all, sir, and I don't have it listed in
                                                                                    18
                                                                                               A. -- can I continue?
      any of the documents I reviewed for this case.
                                                                                     19
                                                                                               Q. -- if -- if the --
19
                                                                                     20
20
           Q. So the reason I ask that question, is there any -- in
                                                                                               A. Then I'll answer your question.
      your opinion of page 17, just above paragraph 18, you say, "In
                                                                                               Q. -- if the -- well, you didn't answer, so I want to be
21
                                                                                     21
      my opinion, the CPD has taken proactive steps to provide their
                                                                                           careful --
22
                                                                                     22
23
      officers with the written policies, which appropriately guide
                                                                                    23
                                                                                               A. All right.
      their performance in the field and to respond to a wide range
                                                                                               Q. -- so the record's clear. If citizens are being
24
                                                                                    24
      of circumstances."
                                                                                           notified by the chief beware of celebratory qunfire, in sum or
                                                               181
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substance, don't do it, right? It's dangerous. Should
 1
                                                                                      1
                                                                                           that. That's the problem.
      officers have been made aware of it in roll call on, say,
                                                                                      2
                                                                                                Q. The chief testified to making that distinction,
 2
      New Year's or January -- or rather New Year's or 4th of July --
                                                                                           didn't he?
                                                                                      3
                     MR. LUTE: Objection.
 4
                                                                                                A. No, not that I recall.
          Q. -- at the City?
 5
                                                                                      5
                                                                                                O. Do you remember him encountering a man on a porch
 6
                     MR. LUTE: You may answer.
 7
          A. The -- the -- I go back to what I said -- I don't
                                                                                                A. No, I don't. I remember him --
      know -- two hours ago. What -- how do you differentiate
                                                                                                Q. Do you remember --
                                                                                      8
 8
 9
      celebratory gunfire? That's the real question that I have and
                                                                                      9
                                                                                                    -- saying that --
      the problem, because again, you're trying to inform an officer
                                                                                                   -- did you remember -- hold on a second. Did you
10
                                                                                     10
      some way there's a difference. There's gunfire. I don't care
                                                                                           even read his full deposition?
11
                                                                                    11
12
      what day it is or what night or what morning or what afternoon.
                                                                                     12
                                                                                                    Yes, I did, sir.
                                                                                                Δ
      It's gunfire. And so to try to say that there should be
13
                                                                                     13
                                                                                                O. Okay. I'm just checking. I'm not trying to --
      something about that, that the officers should somehow be more
                                                                                                A. Well, I hear you say it with some --
14
                                                                                     14
15
      alert to, I find that just totally out of the norm or out of
                                                                                     15
                                                                                                O. -- no, I was --
      anything that I've ever look -- or read, looked, opined on,
                                                                                     16
                                                                                                A. -- incredulous type of accusation that --
16
      wrote on, trod on, that somehow an officer should know the
                                                                                     17
                                                                                                    -- no, no, no, no. My -- my reason for that was I
17
18
      difference.
                                                                                     18
                                                                                           would show you the transcript, but if you read it, that's fine.
19
               And again, I go back to what I think was -- was
                                                                                    19
                                                                                           If you read the transcript, that's all I needed to know.
      pretty good line of questioning to your question -- answers or
                                                                                                    Yeah, can I answer that question by saying what I
                                                                                     20
                                                                                           have in mv --
21
      responses to your question or someone else's in their
                                                                                    21
22
      depositions that we don't teach officers to differentiate or
                                                                                    22
                                                                                                O. Sure.
      categorize celebratory gunfire versus active gunfire or
23
                                                                                     23
                                                                                                    -- mv report?
24
      gunfire. And nothing that I have reviewed in all of my time
                                                                                     24
                                                                                                O. Yeah.
      differentiates that, that an officer should somehow distinguish
                                                                                    25
2.5
                                                                                                A. And just take me a few minutes to find it. Now,
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- which chief are you talking about? O. Chief Gabbard. 2 I don't -- I mean, I'd like to see how that could be 2 3 A. On page 20 of my report, second -- or first full 3 taught to an officer. 4 paragraph, Chief Gabbard also testified use-of-force policies 4 Q. Well, if an officer -- I think from your training and covered in training scenarios are not specific to from your teaching -- was to follow your advice and look at the New Year's Eve or July 4th. Officers are not trained on the 6 6 situational awareness and the body position and the gesturing term "celebratory gunfire," and that de-escalation and training of a person shooting a gun into the air, would they be able to discern that as a act of celebration or as act of violence? 9 Captain Marino at the time in his deposition also 9 MR. LUTE: Objection. You may answer if you said that would be negligence to try to train or have a policy 10 10 in that regard. That's my --A. I -- I don't know how -- how the officer would get 11 11 12 O. I saw that. I read that. 12 into the mind of the subject firing the weapon. 13 A. -- yes. 13 O. Well, if the officer was reminded and carried with him or her into the field that it's New Year's Eve and 14 O. My question's different. 14 encounter someone shooting into the air, could they combine the 15 A. But it goes with what you're asking. 16 Q. I appreciate that, and I want to make sure that 16 reminder with the behavior, as you have indicated in your you're heard in that way. You don't recall Gabbard's testimony teaching, and make the match that this is celebratory gunfire? 17 17 18 about encountering a man with a revolver and how he recognized 18 MR. LUTE: Objection. You may answer if you that to be an occasion of celebratory gunfire in his own 19 19 20 career, correct? 20 A. No. I don't see how that occur -- could occur, not MR. LUTE: Objection. You may answer. in my mind. 21 21 A. No, I -- I do not. I don't -- I don't, I'm sorry. Q. And so how did you make the link that he would be 22 22 23  ${\tt Q.}\quad {\tt Is} \ {\tt it} \ {\tt impossible} \ {\tt for} \ {\tt an} \ {\tt officer} \ {\tt to} \ {\tt decide} \ {\tt whether}$ 2.3 thinking about the murder that happened earlier as he there's celebratory qunfire going on? Is that impossible? 24 24 approaches my client's house? A. I think it is, yes. A. Because it was in his testimony. 185 186
- 1 O. Do you know if he understood what was happening when he got to the scene? Do you --2 A. When you say, "he," you're talking about --3 4 O. Huber. A. -- Officer Huber? 5 6 Yes, sir. Do you -- do you remember if he knew what 7 was happening when he got to the scene? A. No, he didn't. He had to investigate. 8 9 Q. Was there any testimony or any piece of his original statement to BCI that indicated he was carrying the memory of 10 the murder in his mind as he investigated his call for service? 11 12 A. I don't recall specifically at the BCI interview, but it's certainly in my report that I believe it was out of his 13 deposition testimony. 14 15 O. Yes. A. But whether it was in the BCI investigation, I  $\operatorname{\mathsf{--}}$  I 16 don't recall that. And maybe the investigator didn't ask that 17 18 question. 19 Q. In the article that IACP produces in its journal, it indicates that in the past seven years relative to the 2010 publication, there had been no officer-involved shootings in 21 22 any of the New Year's Eve and New Year's Day operations. Does that infer a need to consider policy changes for an 23 24 organization? 25 A. Not that I --

MR I. HOMMEDIEII Objection O. Go ahead. I'm sorry, not that I would see. 3 4 O. And you know that officer -- there's hundreds of 5 officers at the Phoenix Police Department? I don't know how many they have, but I would assume. But I do not know that. O. The article goes on to say this is, guote, Due in 8 9 part to the training reminders given to the officers, which are based on training they received earlier in their careers. 10 11 Are you aware of any training reminders that are 12 given to officers in Canton regarding how to approach citizens 13 on New Year's Eve or New Year's Day? A. I didn't look at the curriculum, so I can't answer 14 15 that. 16 Q. Okay. The article goes on to say, "When the teams are approaching and communicating with violators, the 17 18 supervisors are normally there with them." Is that something 19 that Canton could have done? MR. LUTE: Objection. 20 21 A. I doubt it. 22 Q. On what facts? A. On the facts that each incident is unique and a 23 2.4 supervisor will not be on scene until an officer requests that.

Now, Officer Huber, in this case, did ask for backup. He did

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ask for additional cars after he was on the porch and backed
                                                                                            So I don't know how many officers were on duty that night or
      away from the porch. So I think he had a good plan in place.
                                                                                      2
                                                                                            how many supervisors were on duty that night, but it certainly
 3
      And if there were available supervisors -- I don't know how
                                                                                      3
                                                                                            had two homicides that they were perhaps probably coordinating
 4
      many were available or not -- might've responded to that radio
                                                                                       4
                                                                                            and calling in investigators to cordon off the area to make
      transmission that he gave after he backed off of the porch. So
                                                                                            sure evidence was not moved or tampered with so that they could
 6
      that would be, to me, a appropriate thing if I'm a sergeant in
                                                                                       6
                                                                                            do an investigation of those, and then all of a sudden you have
      the vicinity. I'm not tied up on something else, sure.
                                                                                            the shooting. So --
           O. So could Canton have assigned supervisors to work
                                                                                                 O. Did vou receive --
 9
      specific zones with teams of officers on New Year's Eve as
                                                                                      9
                                                                                                 A. -- I don't know that that could be possible in this
      happens in Phoenix?
                                                                                      10
                                                                                            incident on that night.
10
          A I don't --
11
                                                                                      11
                                                                                                 O. I hear you. Did you receive any facts or evidence or
                                                                                            information in your review of this matter to support the notion
12
                     MR. LUTE: Objection. Go ahead.
                                                                                      12
13
          A. -- I don't know that they would have to do that.
                                                                                      13
                                                                                            that there was not enough manpower on the streets of Canton?
          O. Oh, they have to. Could they have done that?
                                                                                                 A. No, but again, they may be tied up with other duties.
14
                                                                                      14
15
          A. No. I don't think that that would be necessary.
                                                                                      15
                                                                                            Beyond just the homicides, there may be other calls. I know
          Q. I didn't ask if it was necessary. I asked could it
16
                                                                                      16
                                                                                            one sergeant recorded the firing and the fireworks,
                                                                                            Sergeant Davis, if I -- I may have his name wrong -- but he
17
     have been done?
                                                                                      17
18
          A. I don't think it could have been done --
                                                                                      18
                                                                                            submitted a video of -- of that and audio recording. So I'm
                                                                                            not sure what his -- his duties were that night, but I know he
19
               Upon what --
                                                                                      19
20
              -- because they have other things going on that
                                                                                      20
                                                                                            was tied up with that.
21
      night.
                                                                                      21
                                                                                                 O. Did you receive any information or data at all from
                                                                                            the City regarding how busy the officers were that night?
22
              -- what facts do you have to share with us about
                                                                                      22
23
      that?
                                                                                      23
24
                                                                                     24
          A. Well, they had two homicides. I know that. And they
                                                                                                 O. "These operations," says the article, "have
      were investigating those and trying to clear the scene there.
                                                                                            successfully reduced random gunfire in Phoenix by 64 percent."
 1
      Undoubtedly, the same success can be achieved elsewhere
                                                                                      1
                                                                                            on New Year's is important or is significant to you; is that
      throughout the United States through this type of cooperative
                                                                                      2
                                                                                           right?
 2
      operation, which employs education combined with enforcement.
                                                                                                    I don't have any data that would support data one way
                                                                                       3
 4
                Is it significant to you as a law -- former law
                                                                                       4
                                                                                           or the other. Now, maybe because -- the only thing I could
                                                                                            comment on -- maybe because the community saw people were being
 5
      enforcement professional and as a teacher of law enforcement,
                                                                                      5
 6
      that Phoenix reduced its random gunfire by 64 percent by
                                                                                            arrested for it. Don't do that. That might have significance.
 7
      implementing the -- the tactics stated in that article?
                                                                                            So you got to look at other -- the variables than just they
          A. Well, first, that's what they say. I don't see any
                                                                                           made like a proactive enforcement on that, that looks like to
 8
                                                                                      8
 9
      data that reports one way or the other that -- that that's a
                                                                                      9
      reduction in that but from what the paragraph right there
10
                                                                                      10
      you're showing me, so I don't see any data. It's what they
                                                                                                 A. -- and arrested people.
11
                                                                                      11
                                                                                      12
12
      report in that. So I have -- you know, what are the
                                                                                                 O. -- so just in the case of the City of Phoenix,
                                                                                            12 years prior to my client's death, you're thinking that
13
      limitations to that? Does that mean everything that the
                                                                                      13
14
      officers did or other things reduce that, and is that an
                                                                                      14
                                                                                            perhaps their program, just as you said as a comment -- you
      accurate number? So I'd have to -- that -- that's the first
15
                                                                                      15
                                                                                            just made a comment, could have reduced the gunfire because
      thing. There's limits to that. So I don't know that that's
                                                                                     16
                                                                                            people were seeing all officers engaged in the community
16
      accurate or not. I'm just going by what that article says.
                                                                                            enforcing that law; is that --
17
                                                                                      17
18
          Q. So my question was: Is it significant to you as a
                                                                                      18
                                                                                                A. Making arrests.
```

Q. So you don't have enough information to have a 24 police-officer-involved shooting in the past seven years thought about whether a 64 percent reduction in random gunfire 25 relative to that article being published? So seven years after

19

20

21

22

23

Q. Making arrests.

That's possible.

Q. Is it significant to you at all, as a former

professional law enforcement officer or as a teacher of law enforcement officers today, that there had not been a

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former professional of law enforcement?

Again, I can't make that distinction because I don't

know what data they've looked at. What was it like before?

And what -- and over those seven years, how have they tracked

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they implemented the change, there hadn't been a single
                                                                                                   And had you read the article, you might've known
                                                                                          that?
      officer-involved shooting. Is that significant to you?
                                                                                     2
                     MR. LUTE: Objection. You may answer.
 3
                                                                                     3
                                                                                               A. Well, sure I would've known -- I would've known the
 4
                     MR. L'HOMMEDIEU: Objection.
                                                                                          article.
              It -- again, I don't know what happened before.
                                                                                                   But you couldn't find it?
                                                                                               A. I didn't say I didn't find it. I didn't -- I
 6
      There's nothing that showed that pre-test, post-test. There's
                                                                                     6
      no pre-data analyzing. Now, when you say, "officer-involved
                                                                                          didn't -- I never read the article. It has nothing to do with
      shootings," what, on -- on just this issue or in general? Who
                                                                                          my opinion in this case.
 9
      knows? Based --
                                                                                     9
                                                                                               Q. Okay. Fair enough. I -- I hear you. It doesn't --
          O. On --
                                                                                    10
                                                                                               A. Okav.
10
          A. -- on this article --
                                                                                                    -- have anything to do with your opinion.
11
                                                                                     11
                                                                                               0
12
          O. -- it says --
                                                                                     12
                                                                                               A. But you keep beating a dead horse.
13
          A. -- I can't make that determination.
                                                                                    13
                                                                                               Q. Okay. So when we look at your Opinion Number 2,
                                                                                          let's go to that --
          O. -- "No officer-involved shootings in any of the
14
                                                                                    14
      New Year's Eve and New Year's Day operations." Is that
                                                                                    15
16
      significant to you as a law enforcement professional?
                                                                                    16
                                                                                               Q. -- at page 17, "Huber has received ongoing training
          A. Not without the data.
                                                                                          commensurate with his assigned duties."
17
                                                                                    17
18
                     MR. L'HOMMEDIEU: Objection.
                                                                                    18
                                                                                               A. Yes, I'm with you.
          Q. Not without data.
                                                                                                   All right. The opinion in italics is,
19
                                                                                     19
                                                                                          "Administrators have provided Officer Huber with ongoing
20
          A. Not without more information.
                                                                                    20
          Q. And what kind of information would you need for that
                                                                                          training commensurate with his law enforcement duties."
21
                                                                                    21
      to be significant to you?
                                                                                                    Do you know if Officer Huber -- let me see if I have
22
                                                                                    22
23
          A. Well, let's see, what -- how many -- were there no
                                                                                    23
                                                                                          this right -- actually qualified on all of the weapons that he
24
      officer-involved shootings before that or were they very rare
                                                                                          is supposed to have qualified in 2022 -- or 2023 -- excuse me,
                                                                                    24
                                                                                           2021?
      or was it for other reasons?
                                                               193
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1

2

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25

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A. September, I think, 9th or 2nd, he qualified with his
 1
 2
      firearms.
          Q. Do you know if he qualified for all of the firearms
 3
 4
      he was supposed to qualify for?
          A. I don't know that for sure, but I know that the BCI
 5
 6
      reported that. There was a document in the training records
 7
      and the file that I read. I don't know what all firearms he
      qualified
 8
 9
          Q. Okay. Let's see if --
          A. But he -- he was qualified on, to be more specific,
10
      September 9th, 2021.
11
12
          Q. All right. Let's see if I can -- are you familiar --
      have you seen this in-service attendance? Have you seen it?
13
          A. Say again.
14
15
          O. Huber's in-service attendance, have you ever seen it?
16
          A. Yes. I mean, you show me what you -- yes.
          Ο.
               Yeah.
17
```

Q. We're going to put this and shift for the screen.

This is going to be marked as Exhibit 23. We're going to look

at Column 17, the first empty yellow column here for Huber, and

A. I don't -- I can't see that. You've got a --

that's a shotgun. Did he qualify on shotgun?

Q. Okay. I'll make it bigger.

18

19

21

22

23

24

25

A. Okav.

A. -- so --

bottom left corner it says, "Robert Huber, Patrolman," and the 4 dates when he qualified. And I want to go up to shotgun. See 5 this column? A. Yes. Q. Says, "Shotqun." We go down. You see he doesn't 8 9 qualify for the shotgun, does he? A. Not on that day. 10 11 O. On any day, looks like he --12 I don't -- I don't see it. Maybe he doesn't carry a 13 shotgun. O. Well --14 15 A. I don't know what he carries. 16 Q. -- do you know if he was required to --17 I do not know. 18 Q. -- were you ever given any information, or -- at all 19 as to whether he was required to --20 Q. -- qualify for -- all right. And how about the same 21 22 for rifle? Do you know what kind of weapon that would've involved in this particular matter? 23 24 A. No.

O. Do you know if he was required to attend in-service

A. -- and I can't see the columns or the --

Q. I'll show you the columns. Okay. So here at the

O. I'll make it bigger.

194

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training for a rifle? Okav. Q. -- on --A. I think, as I recall reading material, he qualified 2 2 3 on a monthly basis with a lot of different firearms through the 3 A. What does it mean? 4 SWAT team training that he had. Now, whether it's recorded or 4 Q. -- Column 18, it means he was supposed to qualify or not, I don't know. he does not enter a date for qualifying on less lethal. Do 6 Q. Okay. Do you know if he ever attended in-service 6 you -- do you have any knowledge about that at all? training or was required in-service -- attended in-service A. No. I don't. 8 Okay. And you have -- you were not provided any 9 A. I don't know that. 9 information about that, were you? O. Were your --10 A. Not on that chart, no. There were other -- there 10 A. I know that he qualified with all sorts of weapons on were other charts that I looked at. 11 11 a monthly basis as part of his duties as on a SWAT team. Q. And did you see him qualifying for less lethal of any 12 12 13 O. And you would imagine that he would have to -- he 13 kind known to you in -would have to qualify for less than lethal --A. I'd have to go back and look, sir. I don't remember 14 14 A. Less than -because there were so many records. Less lethal can mean his 15 15 O. -- wouldn't he? 16 16 TASER, if he carried one, pepper spray, impact weapon A. -- lethal what? projectiles. It can be mean a whole host of things. So I 17 17 18 O. Force, less lethal force --18 think if you look at other documents, that was -- as I recall A. In terms of -- give me an example. it, there were documentation to that regard. 19 19 20 Q. Well, control techniques, anything. I mean, it's --20 Q. Okay. Regarding his training or lack thereof in this I don't know what they mean here in this sheet. All I can tell 21 case, did you ever review that document and ask for information 21 or seek more information about it in this case? 22 22 23 A. Well, then I can't answer your question if you don't 23 A. No. Because I looked at other records of training. Q. All right. Now, let's do this, let's go to -- at 24 even know what it means. 24 -- oh, no, no, I know what it means. I am saying --Page 24 of your report, you write, "Based on my review of the 1 1 aforementioned documents, it's evident that CPD administrators A He testified to unknowns have made a conscious choice and by practice to provide Huber 2 Q. Did he testify as to what he was cognitively 2 with ongoing training in order for him to competently perform processing as he drove to the location? 3 his law enforcement duties." 4 4 A. I don't recall that specifically. Q. Did he -- did he testify as to what heightened his 5 In writing that sentence, did you have in your 5 6 possession -- do you know -- the Exhibit 23, his in-service sense of anticipation? 7 attendance sheet? A. I think I recall reading that in the BCI A. What you just showed me? investigation report to the investigator that that voluminous 8 8 9 O. Yes, sir. 9 amount of gunfire to where he was sitting in the parking lot, I 10 A. Yes. I looked at that, as well as other training believe, of the hospital was so loud and so cadenced that --10 that that's what drew his attention there. And that would put 11 records. 11 12 Q. Yes. Let's see. All right. Moving on now to 12 him on -- as I recall him talking about his brain and Opinion Number 3 listed at page 25, "Huber appropriately processing that, that -- that's where I got that from, his BCI 13 13 responded to active gunfire." interview with the investigator. 14 14 15 You indicated that Huber would have been cognitively 15 O. So you also write, "Huber would also be thinking processing potential scenarios as he drove to the location, 16 about the two homicide incidents which occurred just prior" --16 which would heighten his sense of anticipation and alertness. "hours prior to his shift." Do you see that there? 17 17 Can you find that in your report? I'm looking for it now. 18 18 A. Yes. 19 A. Page 29 to help you out, last paragraph --19 Q. And you said --Q. There it is. A. And I --20 20 21 A. -- last sentence of the fourth paragraph. 21 Q. -- and you said he would be thinking simultaneously 22 O. So these potential scenarios would be cognitively 22 about that?

processed. Did -- did Huber ever tell you that?

A. No. I didn't interview him.

Q. Did -- did he testify to that?

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A. I -- yes. I -- I recall him talking about it in the

combination, thereof, of his interview and the deposition about

that being part of his thinking process as he was responding or

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trying to respond to wherever the gunfire was coming from. process I went through and trained curriculum at the academy in 2 Q. All right. You don't have any specialized knowledge 2 that regard. 3 or training with respect to cognitive processing, do you? 3 Secondly -- because it was required basic academy 4 A. In terms of as it relates to reaction time, I do. As 4 training -- second, I trained at -- in terms with PPCT, it -- as it applies to processing information with which to a learning that and being trained by numerous individuals that 6 selective force option or to try to understand and identify 6 brought in that to our -- to add on to our training curriculum suspect behaviors that are a resistance notion, ves. with PPCT, as well as other training conferences, sessions that I have been to over the years, written on it, actually done 9 A. I've trained that many, many years, going back to the 9 research on it myself, so.... Q. What parts of his neurobiology would be involved in late '80s, to the early '90s, to the current, actually. 10 10 Q. So you're referencing --11 cognitively processing scenarios? 11 12 12 A. His brain. 13 Q. -- so you're referencing your human factors teaching? 13 O. What parts? Α. I would say the frontal cortex for sure and the 14 Yes. 14 15 O. Yeah. I'm asking if you have been trained in 15 hippocampus, as well as a thalamus region of the brain. 16 cognitive processing, how we process information and how we 16 O. Did you author the triune brain theory in your 2018 store information and then how we ultimately carry with us or book? 17 17 18 have awareness of events? 18 A. Did I author it or did we write a chapter on it? A. Yes, sir --Yes, it talks about the limbic system, yes. 19 19 20 Q. Have you been trained that --20 O. Are you aware that the triune brain theory has been 21 A. -- yes, yes, sir, I have. 21 debunked? -- where did you get your training? A. Yeah. Some circles say that, other circles do not 22 22 23 A. Well, starting at Ferris State University when I was 2.3 say that. 24 certified by the State of Michigan to provide such training. I 24 O. Do you have any specialized knowledge or training was part of the -- oh, man -- several month-long certification with respect to how the brain works or stores information? 1 A. Other than what I've been trained to with human it -- not to give you a quantified number, but it varies from factors I've already alluded to. person to person based on their training and experience. 2 Q. And that relates to what a stimulus does to a Q. And --3 4 person's ability to process that stimulus? 4 A. I can't quantify that. Q. -- so you don't know? 5 A. Correct. 6 Okav. I don't. I can't quantify it because it varies 7 A. To some extent, yes. Not totally, but yes. with --Q. Okay. And so beyond that, do you have any other 8 O. Well, do you know the --8 9 specialized knowledge of training? 9 -- we might have a -- you know, you may be able to A. What do you mean "beyond that"? process 42 of the items, and I may be able to browse 4 or 5, so 10 Q. Beyond know -- beyond studying how a specific it's all variable --11 11 12 stimulus will or will not affect the person under stress as a 12 Q. Well, not -- not process. How many thoughts -function of their human factor? 13 13 A. Yes, how the autonomic nervous system processes a 14 14 -- how many thoughts can we attend to in any given 15 stressful or stimuli that a person -- which can be 15 moment? idiosyncratic. All of us look at it differently and undertake 16 16 A. Not very many.

21 anxiety, anticipation, perception, so forth. 22 O. In light of your experience, knowledge, and training in those areas, do you know how many thoughts we can carry with 23 24 us at any one time? 2.5

stress, but if it activates the sympathetic nervous system,

then the whole process goes into place in terms of trying to

help that individual or officer, as it may be, to deal with

what is producing that particular stressful stimuli, fear,

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A. Well, you get confused. It's -- it's -- I think

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17 Do you know how many? 18 A. Not exactly off the top of my head, no. 19 Q. You indicated that proceeding lights and sirens would have been unsafe for Huber; is that right? 20 21 Δ 22 O. And proceeding to the location -- you write at page 30, "Without lights and sirens provided a safe and 23 24 tactical advantage for Huber, and it was not contrary to police 25 procedures": is that right? 204

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- A. That's correct.
- 2 Q. Did you read Huber's testimony in its entirety?
- 3
- 4 Q. And -- and I just had to ask just to make sure we're
- on the same page. Are you aware of what he said at transcript
- page 186 when asked, "I'm talking at the time when you pulled 6
- up, were you aware of anything that would have made it unsafe
- to turn on your overhead lights?" Do you recall what his
- 9 answer was?
- MR. LUTE: Objection. Go ahead. 10
  - A. I don't -- didn't memorize this deposition.
- Q. His answer, "No, I don't think there was anything 12
- unsafe at that time to turn them on, no." Do you recall that 13
- testimony? 14

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- 15 A. Not specifically, no, now that you read it. I don't
- 16 recall it specifically, but to me it would be in response to
- your question. 17
- 18 Q. Well, at the time he pulls up, he was not aware of
- anything that would have made it unsafe to turn on his lights, 19
- 20

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- A. Right. That's on that page, but I think the 21
- subsequent pages, now that I think about it, I think he does go 22
- 23 back and answer and provide more information about the tactical
- advantage and his safety, as I recall. 24
- O. And under the circumstances encountered by

- Officer Huber, you wrote, "It would not be advisable for him to
- contact Mr. Williams, and he's not required to announce that he
- is on location." Isn't that in your report?
- A. Yes.
- But Captain Davis testifies in his deposition at
- 6 page 253, quote, I mean, I don't know why he didn't knock on
- the door or knock on the window or vell or scream. I don't
- know. That would be a question for him. I don't know.
- 9 "Knocking on the door and knocking on the window,"
- 10 asks the questionnaire, "would have been an opportunity to
- announce himself and possibly de-escalate," fair? 11
- He says, "Possibly." 12
- 13 Do you remember that testimony?
- 14 A. Vaguely.
- 15 O. Why didn't you include Davis's testimony at
- 16 transcript 253 or Huber's at transcript 186 in your analysis of
- this issue? 17

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- MR. LUTE: Objection. You may answer.
- I don't know if I didn't. I mean, I have 50 pages 19
- 20 here. If you ask me a specific page in a passage, I'd have to
- go back and look or look at my report, but --21
- Q. Well, if you just go to page -- here's the point, if 22
- 2.3 you just go to page 30 where you wrote, "Proceeding to the
- location without lights and sirens provided a saving type of 24
- advantage." And above that, you spoke of, "He could possibly
- 205
- have alerted the shooter and others that he was arriving
- drawing" -- "unnecessarily drawing the focus of attention of
- the shooter to his vehicle." I'm just wondering if you had any
- 4 factual support for that from the record that you've reviewed.
- A. Well, I -- to answer your question, I'm back on 5
- 6 page 26 and 27. I identified guite a few pages from his
- deposition --7
- 8 O Who's he?
- 9 -- in that regard.
- O. Who's he? 10
- A. Huber --
- 12 O. Do vou --
- 13 A. -- that's who you're asking me, right?
- Q. -- do you identify 186? 14
- 15 A. Maybe somewhere in here I do. I'd have to look. And
- if I didn't, I -- okay -- so -- so be it. I mean, that's 16
- your -- your impression. I think it's later on in the report 17
- 18 where I talk more about that in detail where we actually have
- 19 him, Huber, on the front porch and then backing off the front
- porch as part of his de-escalation. That's my recollection. 20
- Q. You -- at page 30, you wrote, "Under the 22 circumstances encountered" -- this is the last paragraph, first
- sentence -- "Under the circumstances encountered by 23
- 24 Officer Huber, it would not be advisable for him to contact
- Mr. Williams, and he's not required to announce that he's on 2.5

- location." Did I read that right? 1
  - Α. Yes.
- And did you cite any record in support of that 3
- 4 observation?

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- A. No, it's my opinion. 5
- What was the factual basis for that opinion?
- A. Reading all the evidence and all the file and all the
- information in this case 8
  - Q. Does that include Captain Davis' testimony?
- A. Everything that I've read. 10
- Q. And so when he says, "Knocking on the window or the 11
- door would have been an opportunity to announce himself and 12
- possibly de-escalate, fair?" 13
- He says, "Possibly." Did you consider that? 14
- 15 A. Possibly. But I also looked at what Officer Huber
- 16 said. Let's be fair. He was by himself. He wasn't going to
- knock and announce at that time when he just saw an individual 17
- 18 with a high-powered rifle that could have startled him, could 19
- have shot through his -- his vest. So he did the prudent thing, in my opinion, not doing that. And Captain Davis wasn't 20
- there. Let's go with what Officer Huber's perception was, his 21
- 22 impression.

- 23 O. Let's do that.
  - A. Yeah, what -- what he says.
- 25 O. When Huber -- when Huber looks through the window.

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what is the man in the window doing with the gun? MR. LUTE: Hold on, wait one second. 2 A. I think he put it down on the dining table as I 2 THE WITNESS: I'm sorry. recall 3 3 O. Next -- next -- I'm going to keep reading the 4 Q. Is there anything else you recall him saying? 4 transcript for you. Not that I recall. "And there was no situation that forced you to make a 6 Q. All right. Do you recall him saying he was putting 6 split-second decision when you were on the front porch looking the gun -- or he radioed putting the gun away? at the window, correct?" 8 Yeah. Later he did, ves. Putting it -- well, 9 putting it away, I don't know what that means. He didn't 9 Reading on, "And when you were on the porch, you, if secure it. He put it on the table. 10 we look at what you said at 12:07:06, you saw the male putting 10 Q. So we'll get to this then. You say at page 31, in the rifle away?" 11 11 the middle of -- or towards the end of that first full 12 12 Answer, "Yes, what appeared to be him putting it 13 paragraph, "With numerous unknowns facing Huber at the time, 13 away, yeah." Going on, "So I think," he says, "my brain attributed to, 'Okay. I think he's putting it away.'" knocking on the door and contacting Mr. Williams as he placed 14 14 the rifle on the table would've placed him in an unnecessary At 280, "And you had the opportunity to knock on the 15 and unsafe situation." That's what you wrote, right? 16 16 front door, correct?" A. Correct. And that's based on Huber's testimony. 17 "That was an option, yes." 17 18 O. Did that include his testimony at page 269? 18 "And you made the intentional decision not to do A. I don't know what is on 269. 19 19 that, correct?" 20 Q. It says, question, "Can we agree that there was no 20 Answer, "That is correct." situation that forced you to make a split-second decision when 21 At 280 to 81 at the bottom, "Can we agree that the 21 you got out of your car?" earliest opportunity to engage or talk with Mr. Williams was 22 22 23 "That is a fair statement, yeah. There was nothing 2.3 when you saw him in the house when he had" -- "was no 24 discernible and no lethal threat to you over Mr. Williams." right there driving me, no," he says. 24 A. Not at that time. Beck's objection. 209 210

1 "That would've been the earliest, ves. I could have maybe made contact with him. That is a fair statement." 2 Did you include any of that transcript in your 3 deposition review? 4 A. I read all of it. 5 6 O. Did you include it and cite it in your report at all? 7 A. I don't know. I'd have to look, but --8 O. Go ahead, please. 9 Yes. So he's saying he's agreeing with whoever the questionnaire is, if it's you or someone else, but he chose not 10 to based on what I've already articulated, which is part of his 11 testimony. And there was no split second at that point in 12 time. He didn't shoot Mr. Williams then. 13 O And he had --14 15 A. He had actually backed away. 16 Q. -- and he had an opportunity, based on his testimony, to make contact with him. 17 18 A. But he felt it was unsafe. 19 Q. The question asks, "When you saw him in the house when he was no discernible and no lethal threat to you?" 20 Answer, "That would've been the earliest, yes. I 21 22 could have maybe made contact with him. That is a fair statement " 23

MR. LUTE: Wait, wait for the question.

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A. He said he could --

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1 O. Yeah. Is that consistent with your recollection of 2 his testimony? A. No. I mean, it is there, but on -- further on, he 3 4 talks about his safety, knowing what that rifle can do because he's -- he has one. He's shot and trained with that and his vest -- knowing that his vest would not stop a round coming from that particular type of high-powered firearm. And he 7 moved away, backed off for that very reason for his safety. 8 9 I believe you also cited in your report Policy 300.6, which speaks to verbal warnings in a deadly-force situation. I 10 think you actually cited the entire 300 section use-of-force 11 12 policy in your report and at transcript page 271, Captain Davis testifies as follows: Question, "Officers are expected to 13 provide verbal warnings in a deadly-force situation whenever it 14 is feasible and safe to do so. Did I read that right?" 15 16 17 "Prior to the gunfire breaking out and as my client puts the gun on the table, did Officer Huber have an 18 19 opportunity to announce his presence safely?" Answer, "He could have." 20 Did you include that or critique any of that in your 21 22 report? Yeah. I considered it. 23 2.4 O. And why did you include that in your report? 25 A. Because he wasn't there and Officer Huber was and

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gave his testimony based on what I've already identified. Q. And so we know that the subjective information 2 I wouldn't put that there. I did put a lot of --2 3 received by an officer is important, his point of view. We 3 you're picking and -- you know, cherry picking, which is 4 would also understand that the objective circumstances and 4 appropriate, but I did put a lot of other things that you're facts come into play, right? leaving out. And the testimony by Officer Huber is -- is 6 A. It can. 6 there, which is in my report by the way. O. Can or it does all the time? O. And I'm going to make something perfectly clear. You Yes, they do. 8 wrote a 50-page report. There's a lot more in your report than 9 Q. Objectively speaking, I mean, as a man's putting a 9 what I'm questioning you about today -gun away, given the testimony I've just read to you from both 10 A. Yeah, so vou're --10 Huber and Captain Davis, doesn't the record support the idea O -- all of which --11 11 12 that Huber had an opportunity to announce his presence safely? 12 A. -- selectively picking out what you want. MR. LUTE: Objection. Go ahead. O. -- well, I -- I'm selectively addressing the parts of 13 13 A. Not by Officer Huber's perception and his testimony. the record that seem to support plaintiff's case that you don't 14 14 address, and these pieces would support plaintiff's case; you 15 Q. How about by your perception? 15 16 I would agree with his perception. 16 would agree? So you agree with Huber? A. I disagree. 17 Ο. 17 18 A. Yes, I do. 18 MR. LUTE: Objection. Go ahead. You disagree with Captain Davis? Q. You disagree? 19 19 A. Yes, I do. He wasn't there. 20 20 A. I totally disagree with you, sir. Q. Why did you put that in your report? Q. And -- and so when -- when the officer in this case 21 21 MR. LUTE: Objection. Go ahead. testifies that he could have made contact but chose not to, 22 22 23 I don't -- I don't -- there's no need for me to put 23 that there was no discernible lethal threat at that time, that 24 it in my report. What -- I agree or I don't agree with 24 he chose not to engage him, your -- your position is that somebody else that that wasn't on scene? that's not something favorable to plaintiff's case? 213 214

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questions.

1 MR. LUTE: Objection. You may answer. 2 A. You can look at it however you want to. I look at --I'm asking you as an expert. 3 4 -- I look at it differently. Q. Well, I'm not the expert. I'm just asking you as an 5 6 expert if you think that supports plaintiff's case or not? 7 A. No. I don't think it does at all. Q. Are there any facts in this whole universe of facts 8 9 that you reviewed that does support plaintiff's case at all? MR. LUTE: Objection. 10 A. No --11 12 Q. Go ahead. 13 A. -- no, sir. Q. Let's talk for a second about de-escalation. What is 14 15 your -- first of all, you cite Policy 300 in your opinion -- or in your report and at Use of Force 300.5(a) it says, "When 16 feasible, an officer shall use de-escalation techniques to 17

reduce the need for force and increase the likelihood of

as he backed away from the window, walked off the porch, moved

to the street, continued to assess the situation, radioed

dispatch to send more cars and corrected the location of the

In your opinion, you say, "Officer Huber de-escalated

voluntary compliance." Let's stop right there.

address"; is that correct?

A. That's correct.

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9 of de-escalation in every case? A. I'm saying it in this case. It could be in other 10 11 cases depending on the fact patterns, but I'm only applying it 12 to this case Q. And so how do you define de-escalation? 13 A. De-escalation is oftentimes misconstrued and it's not 14 15 just verbalization. It's using prudent thinking, tactical 16 assessment, and sometimes using other strategies. Verbalization can be one. In this case, I don't think that was 17 18 appropriate to do. That would've increased officer's -- his 19 safety would've been jeopardized, but it's moving back, giving distance between a person and a subject, or in this case, a 20 21 house and the subject. It's radioing for backup. It's using 22 time as a tactic. So there's a lot of variables that go into play that all were evidence in -- in this -- in Huber's 23 24 decision 25 O. Would de-escalation be a tactic used based on officer

O. Is it my understanding that it would be a fair

reading of your report to say anytime an officer does as you

A. Anytime what? I don't -- I don't follow your

street, continues to assess, radios dispatch to send more cars,

and correct the location of an address, would that be evidence

Anytime an officer backs away from a home, moves to a

wrote here, an officer would be engaging in de-escalation?

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- discretion at the time he's on scene with -- at my client's A. No, absolutely not. 2 No? So if Mr. Williams doesn't know that Mr. Huber 3 A. Now you're asking me specific could it be --3 is present and Mr. Williams is putting a gun away, what was the 4 Q. Is de-escalation, as you understand it, something threat that Huber was de-escalating and how was he that an officer has discretion to employ? de-escalating, aside from just making distance between him and 6 A Yes 6 the house? O. And in this case, are you saving that Officer Huber A. Giving him safety and giving him time as a -- as a 8 chose to de-escalate when he backed away from the window? tactic for waiting for backup as he suggested -- well, first of 9 A. Yes. 9 all, we don't know that Mr. Williams didn't see him. That's -that's speculative on your part. We don't know what he saw or Q. Are you aware of any testimony to that effect? 10 10 A. No. I'm looking at the -- I'm looking at the -- his didn't see 11 11 12 behaviors, his actions, which shows me that without anyone 12 O. Well, was there --13 asking him that, or even the investigator from BCI, it's 13 A And so -evident. It's -- it's right there. It's -- it's jumping off 14 O. -- any -- was there any announcement by Huber that he 14 was spotted or identified or felt threatened by -- by Williams? 15 15 16 0. And when he walks off the porch, that's de-escalation 16 A. Not at that particular time, but the car was parked as well? right underneath the -- the stop -- or the -- the streetlight. 17 17 18 A. Yes. That's backing away from the situation. It's 18 so it was pretty obvious that he was there. He was on the not throwing fire -- water -- gas on the fire. It's moving porch. But going to your specific question, yeah, that --19 19 20 back. It's giving him safety. 20 based on Officer Huber's thinking and testimony about the Q. What -- what -rifle, the high-powered nature of the rifle, okay, and knowing 21 21 A. He had a plan in place from my reading and my that his vest wouldn't stop any of those rounds and not knowing 22 22 23 2.3 if he did announce or didn't announce what that might create for Mr Williams 24 O. Wouldn't de-escalation require Mr. Williams to know 24 an officer is there for de-escalation to actually take place? So backing away from -- part of de-escalation, you 1 have to understand, is proximity, distance, and using time as a the intent of what they did or that they didn't do, the board. tactic and calling for additional backup and -- and additional But in my mind, that's what exactly what he did. 2 cars, which Officer Huber all -- did all those things. And his Q. Let's go to Exhibit 24. Almost done. 3 4 plan was to get more officers there and maybe even a 4 A. Okav. supervisor -- we've already talked about -- to try to call him Q. Are you familiar with the National Consensus Policy 5 5 out, and, you know, secure the -- the residents in the area and call him out and then deal with the -- with the firearm. And October 2017 and revised July 2020? that was, in my mind, good manifestation and demonstration of A. I reviewed it many years ago but not for this case, 8 8 9 understanding de-escalation. 9 but I've reviewed it many years ago. 10 10
- Q. At transcript page 171, Captain Marino testifies to the following question: "Was the board aware of anything that 11 Officer Huber did that was or could be considered an attempt at 12 13 de-escalation?" The board, of course, is the board of review that took --14 A. Yes.
- 15 Q. -- place after the shooting. 16 His answer, "We were not." 17 18 So they were not aware -- that the entire board of 19 all those officers were not aware of anything that Huber did that was or could be considered an attempt to de-escalation. 20 21 How is it that you come to a different conclusion? 22
  - A. That's a good question for him, because I looked at what he did, you know, in his testimony. And to me, that's evidence of de-escalation as I've referenced in my report why they didn't -- I can't -- I can't surmise that. I don't know

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- and Discussion Paper on the Use of Force originally published
- Q. Are you familiar with that source's definition of
- 11 de-escalation? 12
  - A. I've reviewed it.
- Q. "It's taking action or communicating verbally or 13 nonverbally during a potential force encounter in an attempt to 14 15 stabilize the situation and reduce the immediacy of the threat 16 so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a 17 18 reduction in the force necessary. De-escalation may include
- 19 the use of such techniques as command, presence, advisements,
- warnings, verbal persuasion, and tactical repositioning." 20
- Of those items listed in that definition that I just 21 22 read to you, it would be your position that tactical repositioning took place as a de-escalation technique; is that 23

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24 right?

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A. Yes. And time.

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Q. Well, the actual techniques indicated here are not result in the destruction of evidence, escape of a suspect, command presence. Did he make a command presence? or commission of a crime, an officer shall allow an individual 3 A. He was on the scene and he backed away. Command 3 time and opportunity to submit to verbal commands before force 4 presence involves more than -- than just being on the scene. 4 is used." And that's in page 3 and that's B, paragraph 2, of But as a -- that's one definition of de-escalation, so -- and this document. Do you agree with that statement? 6 that's one that you're choosing to use. 6 A. If it's feasible. And -- and that's just a summary O. I am. And I'm just wondering if given that statement. That's not a full rendition of all de-escalation definition -- and I'm limiting it -- and you -- and I'll let training that's available to officers. 9 you, you know, deal with this in any way you want, but I just 9 Q. So you agree with the statement? want to be clear -- as to command presence, he didn't use that 10 A. Generally, if it's feasible. 10 as a de-escalation technique. I'm not saying he -- anything Q. And I understand in your report you would take issue 11 11 else about it. He just didn't, correct? 12 and say it was not feasible in this case or you have said that, A That's correct 13 13 essentially? 14 O. And he didn't use advisements, right? 14 A. No. I -- I'm -- I'm saying that he did de-escalate 15 A. Correct. He didn't use any verbal. and that was feasible. 16 Q. And he didn't use warnings or verbal persuasion of 16 O. So de-escalation was feasible in this case? anv kind? A. And he did it. See, you're -- you -- we have to 17 17 18 A. Correct. 18 quantify what de-escalation is. You have to define it. It's more than just verbal or being on the scene. It's a lot of 19 O. Okay. Now, I understand your position. You've put 19 20 it in your paper -- your -- your report that you believed it 20 different tactics, strategies, planning, thinking, movement, would've been unsafe for him to do so; is that right? tactical positioning, so forth. And that's -- that's the --21 21 A. That's my -- that -- that is my opinion, and it's 22 22 that's the problem when most people say, "Well, he didn't 23 also his opinion, Officer Huber. 23 de-escalate." Well, wait a minute, how are you defining Q. Correct. "Whenever possible and when such delay will 24 24 de-escalation? There's a lot of variables involved, a lot of not compromise the safety of the officer or another and will components. And it's not just verbal in trying to negotiate or

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persuade or talk to someone.
         De-escalation can be using time to back away from a
situation and not try to escalate. That's what de-escalation
is. It's trying to -- if I can talk someone into handcuffs or,
you know, when it's feasible, yeah. But this -- this -- so
there's a lot of nuances. That's why I have problems, as many
of us have problems, with this particular document on
de-escalation and others
    Q. So you have a problem with this document?
    A. Yeah, with -- with some of it, yes, I do.
    O. Of what I've just read to you, do you have a problem
with it?
    A. Because it doesn't go into all the full definition of
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what de-escalation is. It gives a piece and a portion of de-escalation, which then leads others to try to say, well, this is it and this is the way it's supposed to be done. Well, no, that's not quite accurate or true. Q. Okay. Anything else that you don't agree with in Exhibit 24? MR. LUTE: Objection.

O. As it relates to what I've shown you? A. I -- I mean, I don't recall all of this document, but I know in terms of de-escalation, there's been a lot of questions that folks have had on this, chiefs, sheriffs, and even attorneys and trainers and so forth. So that's all I can

1 2 O. Okay. I believe you've spoken and taught on the subject of how use-of-force incidents can be defended by law 3 4 enforcement when it comes to civil liability, right?

A. And I've also in that same -- I'm not sure what you're referring to -- but I know I've also talked about in that regard, too, that if you don't comply with the law and do these things, you're going to get sued and successfully sued. So write the check, so to speak. Q. So there's a certain thing you always do, you say, when you do your reports, one of which is to focus on the behaviors. That's something that you always do --Q. -- when you do your reports?

15 A. -- I do. You're right. 16 Q. Right. And you said, I think at one presentation, "If I can focus on the behaviors and get the Court there, then 17 18 I'm ahead of the game." 19

A. I don't recall making -- but you'd have to show me that. But I do talk about -- I've always taught -- and that 20 21 was what my dissertation was on, active resistance from 22 Graham versus Conner. What are the types of subject resistance 23 officers encounter? And that's how you base your decisions on 24 how you respond. You can't get inside someone's head. You

have to go by their actions and behaviors or lack thereof to

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- officer's instructions or commands.
- 2 Q. Okay. Thank you. I was just clarifying that. And
- 3 when it -- when we go to your fourth opinion in this case, you
- 4 say, "Officer" -- well, there's another opinion at page 35. "In
- 5 my opinion, Huber formed the perception that he would be shot
- 6 and killed by Mr. Williams as he fired the rifle, and Huber
- 7 fired his firearm in self-defense." You say that, right?
- A. Yes

11

- 9 Q. And I believe your fourth opinion follows that. I'm
- 10 just double checking to see which page it's on so I don't -- I
  - don't want to say I missed it, make sure I got it. That's
- 12 prior, yeah. So under -- at page 33, paragraph 20, you offer
- 13 your fourth opinion and as a subopinion or a repeat of that
- 14 opinion, I quess, at page 35, you echo the opinion at Number 4,
- 15 is that correct?
- 16 A. Yes. That goes into then -- that's a header that
- 17 goes into the -- my narrative of supporting that opinion.
- 18 Q. Okay. And in your report, you say as shown -- I'm
- 19 going to find the spot here. You believe -- let's be clear --
- $20\,$   $\,$  you believe that it was appropriate for Huber to move towards
- 21 the gunfire?
- 22 A. Yes.
- 23 Q. And you also say that officers are trained to
- 24 immediately do that, move to the qunfire, even when responding
- 25 to a shooting situation as a solo officer, right?

- 1 A. Yes. Can you tell me where you're reading?
- 2 Q. I'm sorry, 37.
  - A. Okay. 37. I'm not sure where you're at, but....
  - Q. Bottom of the page.
- 5 A. Yes, I see that first sentence in that last
- 6 paragraph.

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- 7 O. What's the factual support for that in this case?
- 8 That he was trained to immediately move to the gunfire, even
- 9 when responding as a solo shooter?
- 10 A. He completed the ALERRT training, of which that's how
- 11 the ALERRT training, the curriculum, guides officers to do
- 12 that.
- 13 Q. Okay. And so when you write in the next paragraph,
- 14 "Officers are trained when faced with an active shooting
- 15 situation to immediately respond, not without caution, but
- 16 recognizing and accepting the responsibility that by
- 17 responding, an officer's personal safety may be at risk." Is
- 18 that part of the ALERRT training too?
- 19 A. Yes.
- 20 Q. Yeah. And then in this incident, in the next
- 21 paragraph, you write, "Officer Huber had to quickly transition
- 22 from performing an assessment and investigation of possible
- $\,$  23  $\,$  gunshots fired on location to an immediate situation of active
- 24 gunfire a few yards away from him," correct?
- 25 A. Correc
- 225
- 1 Q. Okay. When the gunfire erupts, is Huber in danger of 2 being shot at that point?
- 3 A. I don't know because I don't know where the barrel is 4 being pointed at that time. Possibly.
- Q. Do you know where Huber is when he is -- when the shots start?
  - A. He is in the street.
- 8 Q. Are you aware of any investigation in this case that
- 9 said -- that showed rounds headed towards the street at any
- 10 point?

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- 11 A. No. But you asked me is it possible, and I'm saying
- 12 it's possible because I don't know where the barrel's pointing
- 13 at that time.
- 14 Q. Let me ask you the question again. From your review
- $\,$  of the facts of this case, was he in a safe position when the
- 16 shots rang out?
- 17 MR. LUTE: Objection. You may answer.
- 18 A. I don't think so --
- 19 Q. And what was --
- 20 A. -- no, sir. He was out in the street.
- 21 Q. -- and so --
- 22  $\,$  A. On the street or on the curb of the -- curb of the
- 23 front yard of the house, in that vicinity, in that area.
- 24  $\,$  Q. And at the time that the shots rang out, it's your
- opinion that things become stressful and fast paced at that

1 point?

2

- 3 Q. And to be fair, prior to the shots ringing out,
- 4 things were not fast paced, were they?
- 5 A. Things?
- Q. The situation, the scene, it was not fast paced prior
- 7 to the shots ringing out?

A. Yes.

- 8 A. There was a limited amount of time that he was on --
- 9 on the location of the property, and then he went to the front
- 10  $\,$  porch. So there was a continual, I'd say, a fluid flow of
- 11 what's going on. And then within him -- well, Officer Huber 12 radioing to send me more cars within at least two seconds is my
- 13 count, then shots begun to be fired again by Mr. Williams. So
- 15 Councy their shoes began to be fired again by fir. Williams.
- 14  $\,$  I think it's a continuous flow, but certainly he was in the
- 15  $\,$  street when Mr. Williams begun to fire.
- 16 Q. So from the time he pulled up until the time he was
- 17 making his last radio communication prior to the shots being
- 18 fired, you would agree with me that that was not a fast-paced
- 19 scene.
- 20 A. He wasn't on scene very long and things started -- in
- 21 terms of fast pace, are --
- ${\tt 22}$   ${\tt Q.}$   ${\tt Just}$  trying to get to the clarity on that question.
- $\,$  23  $\,$   $\,$  Is it a fast-paced scene as you have been trained and as you
- 24 have trained others?
- 25 A. Not at that particular time.

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Q. Okay. And so it's when the gunfire erupts that
                                                                                             effect that at the transcript page 238, he's talking on the
      things give -- that -- that gets -- you -- I think you state,
                                                                                        2
                                                                                             radio at 12:06:39 saying, "Male inside the residence with
 2
      Huber little time to react; that it's a stressful stimuli?
 3
                                                                                       3
                                                                                             firearm, rifle, heavy-set black male. Can com, can you send me
 4
          A Yes
                                                                                             some cars, please?" Are you familiar with that?
               Yeah. And so in essence, by hearing and responding
 6
      to that stimuli as he does, you think he acts appropriately
                                                                                        6
                                                                                                  Q. At transcript 240, it says -- and at 12:07:06, Huber
      thereafter?
                                                                                             says -- it says, "Correction, it's going to be 2300 block of
           A. Oh, ves.
                                                                                             10th Street, 2307 10th Street, Southwest, saw a male's head
 9
           {\tt Q.}\quad {\tt Was\ Huber\ trained\ on\ what\ stress\ does\ to\ him\ when}
                                                                                       9
                                                                                             through the fence after I have heard the shots, got out of my
      he's --
                                                                                      10
                                                                                             cruiser, went up to the porch and saw him putting a rifle
10
               I think I recall in his BCI interview, he talked
                                                                                             away." And that's, again, at 12:07:06. Are you familiar with
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           Ά
                                                                                      11
      about that in and understanding sensory perception and what
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                                                                                      12
13
      happens under stress, sensory response to stress, human
                                                                                      13
                                                                                                 A. With -- with the testimony?
      response to stress, as I recall his testimony. And I certainly
                                                                                      14
                                                                                                      Yes.
14
                                                                                                  Ο.
15
      after reading his training records, know he participated in
                                                                                      15
                                                                                                  A. Yes, with the testimony.
16
      Simunitions training, realistic training, and simulator and
                                                                                      16
                                                                                                     Yeah. And the testimony at 279 goes on 12:07:06 the
      scenario-based training beyond the range. So there would be an
                                                                                      17
                                                                                            question is: "That's when you radio a correction; is that
17
18
      understanding with all these scenarios in my mind.
                                                                                      18
                                                                                             right?"
           Q. There was this indication of the amount of time he
19
                                                                                      19
20
      was on the scene before the shots rang out and the timing of
                                                                                      20
                                                                                                       Transcript 279, "And at that point in time, the male
      his radio transmissions. And you concluded from looking at his
                                                                                             did not pose a discernible threat?"
21
                                                                                      21
      vest, a two-second response or a two-second delay between his
                                                                                                       Answer, "At that time?"
22
                                                                                      22
23
      last communication and shots ringing out; is that right?
                                                                                      23
                                                                                                       Ouestion, "Yes."
                                                                                                       "No," is the answer.
24
          A. From his body-worn camera.
                                                                                      24
               Yeah. Are you familiar with his testimony to that
                                                                                                       Ouestion, "Would you agree with me?"
                                                                                                                                                       230
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1
                "No. He didn't pose a -- okav -- a -- a -- inside
      the house? No."
 2
                Question, "And at that point in time, this male did
 3
 4
      not pose a lethal threat, correct?"
               "No "
 5
 6
                "Is that correct?"
 7
                "That is correct."
               Is that consistent with your knowledge of the
 8
 9
      testimony?
          A. I'd have to go back and look, but it -- it appears to
10
      be from what you read there, if you're reading it --
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12
          Q. And it -- and --
13
          A. -- correctly.
          Q. -- at about 12:07:26, Williams resumed firing his
14
      rifle. Is that consistent with your understanding?
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          A. Correct. And my understanding, as I had put in my
16
      report, that his -- that Officer Huber's correction of the
17
18
      address and information as you -- was around -- on his
19
      body-worn camera is where I looked at it at about 12:06:24 as I
      recall, and within two seconds, 26, is when the -- Mr. Williams
      begun firing his firearm.
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22
          O. And 24 would be the time when he ended the
23
24
           A. Within that time period, roughly, estimate. These
      are all estimates.
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2
      transmissions. We have logs. What do you mean it's an
      estimate?
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 4
           A. Well, some could be the syncing of the body-worn
 5
      camera could have problems, which it does from time to time.
      Okay? So -- and dispatch logs are not always accurate or
      timely in terms of actually when those transmissions are placed
      on a log. I mean, I've noticed numerous times were that's --
 8
 9
      but my -- my opinion and my impression was it was in a matter
      of two seconds after that last radio transmission that
10
      Mr. Williams begun firing his firearm, which coincides with
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12
      what I think BCI investigators put in their report, as well as
      the sound waves and the audio portion from the body-worn
13
14
      camera
          O. Okav.
15
16
          A. That's my recollection.
17
           Q. All right. Now, as it relates to the shooting that
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      takes place itself, in your report, you mention nowhere the
19
      notion that an officer is to know his target and beyond before
      he pulls the trigger; isn't that right?
20
21
           A. I may have not put that in there. I mean, that's
22
      certainly part of their training --
           O. And vou're --
23
24
           A. -- if they -- if they can, if it's feasible.
25
           O. -- and you're aware of that -- that rule of our
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O. So that's a problem because we have radio

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safety, you don't shoot unless you can see your target and I mean, the fact when he came around the side, there 2 wasn't a surprise for him that there was a fence, was there? 2 beyond? 3 MR. LUTE: Objection. Go ahead. 3 A. I don't know. 4 Q. Right? Q. Did he ever testify to that? Well, there's a difference between law enforcement I can't recall that. activity and other gun safety, but generally that's true. But 6 6 And so when he comes up to the fence -in law enforcement situations, it can be a totally different Α. What point? At the point that he's responding to the gunfire. 9 Q. All right. I don't -- I honestly do not -- I'm not 9 A. arguing with you. I do not understand your answer. Could you 10 O. Can he see Mr. Williams? 10 explain? He can see his silhouette and he can see through the 11 11 A. I think I just did. There's a difference between 12 12 slats based on his testimony. general gun safety and knowing where your -- what your backup 13 13 O. He can see through the slats? is or your target. Officers try to know that as well, but in 14 Yes. Where there was not full connection of the 14 some situations -- and this is a good example of that -- that 15 15 slats of the fence. You can see through there light, as well didn't happen here. That wasn't going to happen here. 16 16 as his silhouette, as well as the top portion, 3 to 4 inches,  ${\tt I}$ O. When Huber comes on the scene, he knows there's a think, he said of his head and about 4 to 6 inches of the 17 17 18 porched-in fence on the west side of the property, right? 18 barrel of the weapon. A. I don't know. I don't remember his testimony to Q. And I -- and I remember his testimony about the 19 19 20 20 silhouette too. Do you know if he told that to BCI, the seeing Q. Do you -- well, doesn't he see a fence and a door 21 21 of a silhouette? opening and the top head of a man walking into the house when A. I don't know that he was even asked. I don't know, 22 22 23 he arrives? 23 sir. 24 A. Yes. But I don't know that he said, "fence," then. 24 O. Fair enough. Do you know how much of the scene Huber He does later. could see when he pulls the trigger? 233 234 1 MR. LUTE: Objection. You may answer. 1 the barrel was moving in his direction. 2 2 Q. We know the barrel never does move in his direction A. Of the scene? Q. That is, the scene that is in front of him how much 3 by the video that we see, right? 3 MR. LUTE: Objection. 4 he's able to discern? 4 A. I just said that. 3 to 4 inches of Mr. William's 5 5 A. I don't know that I would agree with that. 6 forehead, his silhouette through the open portions of the slat, 6 Do you have a sense that Mr. Williams wanted to kill 7 and the barrel about 4 to 6 inches as it was moving. 7 or even knew -- start there -- that Officer Huber was outside? Q. And you're familiar with Huber's testimony at MR. LUTE: Objection. You may answer. 8 8 9 transcript 250, "Did it obstruct my view?" Meaning the fence. 9 I don't know if anybody knows. I saw him looking to Answer, "Yes, it did." his left towards the street as he fired several times. 10 10 Question at 278, "And when you chose to run toward Q. Do you have any indication that Williams knew Huber 11 11 12 that gun, you could not tell if the gun was pointed at you, 12 was there, such that he would be shooting at -- at Huber? 13 13 Q. Actually, the video does. Doesn't the video show my 14 Answer, "Correct." 14 15 Under those circumstances, do you still believe that 15 client shooting the gun into the sky?

not tell if the gun was pointed at him as he ran towards the A. As he's looking left towards the street. ann? 18 O. Right. But as he's looking in that direction, can MR. LUTE: Objection. 19 Huber see his face? He can see the top of his head as I've already 20 MR. LUTE: You may answer if you know. 21 indicated 22 O. But can he see where my client is looking or what A. Yes.

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Huber was lawfully permitted to shoot my client when he could

A. And Officer Huber's testimony of his perception that

Q. And it's the sheer intensity of the gunfire that he's trying to do with the gun? 23

leads you to that conclusion? 2.4 MR. LUTE: Objection.

MR. LUTE: Objection.

O. Do you remember that testimony?

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A. What he's trying to do with the gun? He can see -- using deadly force -definitely what he's doing with the gun because there's 2 I said if --2 3 evidence of the muzzle flash and the smoke and haze coming from 3 A. -- or in response to Mr. Williams' behavior. And 4 him discharging the gun. And in his perception, as he's 4 that's -- that's -- I agree that that's true, yes. articulated, as I've already said, moving in his direction. No, my question was different. My question was: If Mr. Huber responds to the stimuli of the gunfire in such a 6 Q. And while that was his perception, did he put himself 6 in a position where his own stress reaction to the stimuli of manner where his perceptions become distorted and he has been 8 the gun going off rendered his perception at odds with what was trained -- that could happen -- and he misperceives the gun 9 actually happening? 9 being pointed towards him and kills my client because of that A. I don't believe so. 10 perception, is he acting as a reasonable police officer in that 10 Q. And so if it -- if that's what he did, just if, if he case? 11 11 put himself in a position responding to that stimuli where his 12 12 13 perceptions were distorted and he responds to those distortions 13 MR. LUTE: Objection. and kills my client, would that be reasonable police conduct in 14 O. And how so? 14 A. Because it's based on his perception. And 15 your opinion? 15 16 MR. LUTE: Objection. You may answer. 16 Mr. Williams created the need to -- for Mr. -- for A. It was reasonable for him to use deadly force because Officer Huber to respond, not the other way around. 17 17 18 he feared for his life and he shot in self-defense based on 18 Q. Is Mr. Huber or my client trained on how to respond Mr. Williams' actions. to gunfire? 19 19 20 Q. Did you answer my question? 20 A. Yes, he is. Officer Huber is. A. I don't know. Q. Yes, Mr. Huber is. And Officer Huber is trained on 21 21 how to do that safely, correct? 22 22 23 I did. You're asking me was his force justified 2.3 MR. LUTE: Objection. You may answer. 24 in --24 A. Now we're getting into various issues about safety. Based on his ALERRY, he may have to take risks that put him in 237 1 a vulnerable position, or any officer, but to -- to stop the 1 MR. LUTE: Objection. You may answer. 2 shooting. 2 A. I didn't see any pointing of the barrel but certainly moving in the direction of Officer Huber. 3 3 4 A. So -- so yeah, we try to -- the officer -- we train 4 Ο. It's moving in the direction, you think? officers. I've trained officers. Officer Huber, yeah, you go 5 5 Α. Yes 6 to the gunfire. And it may put your life at risk, but the need And you base it on the video that you saw? 7 to respond over -- overtakes that risk and the safety of the Α Yes officer 8 Captain Davis testified to this question at 8 9 And I'm just trying to be clear as to how you 9 transcript 86, "Is there a video that shows the gun ever perceive this as an expert and how you would teach the subject, pointed in the direction of Huber?" 10 10 perhaps even where an officer knows that he -- stimuli can warp And he says, "Not that I saw." 11 11 his perceptions, he can become tunnel-visioned on any number of 12 Do you agree with that? 12 13

things, or even narrow-visioned, and have any number of 13 A. Yeah, ves. distortions by virtue of that stimuli. If Huber runs to the 14 Q. When the qunshot starts, Huber runs to the fence gunfire, knowing his perceptions could be distorted, and they 15 porch, and he testified that it obstructed his view. Do you are, is he acting reasonably in your opinion? 16 disagree with that? A. Yes. 17 A. I think he answered that, but I think later on, that same line of testimony and questioning that, again, it was Q. And so when my client shoots the gun off, not -- you 18 don't know, do you, if he's aware of Huber being present? 19 obstruct-- he couldn't see the full body of Mr. Huber, but you A. Well, it looks like he does. I mean, he's looking could see the light through the slats. You could see his 20 towards his left, and that's where Officer Huber's coming up silhouette, and you could see the top of Mr. -- 3 to 4 inches 21 the driveway. 22 of his forehead, Mr. Williams' forehead.

O. And as he is discharging his weapon into the air, do you see my client make any motions with the gun that points the weapon ever at Huber's direction?

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that? 25 A. Yes.

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Q. But his view was obstructed. You would agree with

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apologize, it has been a long day.

Q. Okay. And when -- when he chose -- when Huber chose

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incident."

practice by performing an administrative review of the shooting

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to run towards the qun, he couldn't tell if the qun was pointed
                                                                                     2
 2
                                                                                                  Yes, sir.
 3
      at him: isn't that right?
                                                                                     3
                                                                                               O. Do you -- do you discuss at all the risk he put to
 4
          A. I don't know that he ever testified the gun was
                                                                                         Ms. Williams?
      pointed at him. As he said, it was coming at his direction.
                                                                                               A.
 6
          Q. He says at a transcript 278, question, "And when you
                                                                                     6
                                                                                               Q. Did he put Ms. Williams in risk of getting shot?
      chose to run toward the qun, you could not tell if the qun was
                                                                                               A. I don't believe so.
                                                                                                   Could he have seen Ms. Williams near the doorway as
 8
      pointed at you, correct?"
 9
               Answer, "Correct."
                                                                                     9
                                                                                          he begun to shoot?
          A. Correct.
                                                                                    10
                                                                                               A. No. But Mr. Williams could see. I think
10
                                                                                          Mr. Williams put himself and his wife at risk.
11
          O. Okav. At no point does your report address the
                                                                                    11
                                                                                               Q. Where an officer discharges his weapon under
12
      decision of Huber to shoot through a fence. And I'm just
                                                                                    12
13
      curious, did -- did you consider in your report the risk that
                                                                                    13
                                                                                          circumstances where his target is obstructed and he can't see
      Huber put his wife in who was standing by the door with the
                                                                                          beyond his target, does that officer act recklessly?
14
                                                                                    14
                                                                                                         MR. LUTE: Objection.
15
                                                                                    15
16
          A. Actually, you're inaccurate, because I do talk about
                                                                                    16
                                                                                               Q. In your opinion?
     him shooting through the fence on page 45 in paragraph -- full
                                                                                               A. You have to look at the whole totality of the facts.
17
                                                                                    17
18
                                                                                    18
                                                                                          No, it does not.
              Yeah, you mentioned. What I mean is --
19
                                                                                    19
                                                                                               O. Do you have an opinion as I -- that you state in your
20
          A. No mentioning, I --
                                                                                    20
                                                                                          report -- and we're almost done -- Huber testifies in
                                                                                          transcript 286 to 287, "And when you heard the gunfire, you had
21
          O. Yeah.
                                                                                    21
              -- I discussed it.
                                                                                          the opportunity to call for assistance."
22
                                                                                    22
23
          O. But do you just discuss --
                                                                                    23
                                                                                                    24
          A. Described it.
                                                                                    24
                                                                                                    Do you agree with him?
               -- the risk to -- what I'm getting at -- and I'm -- I
                                                                                    25
                                                                                                   He said it, "could have been," but it was not --
                                                                                                                                                   242
 1
      you're talking about once he heard the -- the gunfire?
                                                                                     1
                                                                                                    You go on to say -- where is the rest of it? -- yeah.
 2
          Q. Yes. Did he --
                                                                                          at the very bottom of the last sentence. "In my opinion, the
                                                                                     2
          A. Or ran to the qunfire?
                                                                                          review board's process of assessing the incident was performed
 3
 4
          O. -- once he heard the gunfire --
                                                                                          consistent with accepted law enforcement practices," right?
          A. What -- what -- at what stage are we at here?
                                                                                              A. Yes.
 6
               -- "When you heard the qunfire," the question is,
                                                                                     6
                                                                                                   Okay. Transcript 170, Marino testified, "Did the" --
 7
      "you had the opportunity to call for assistance?"
                                                                                     7
                                                                                          question, "Did the board consider whether or not Officer Huber
               And his answer was: "That could have been an
                                                                                          made any attempt to de-escalate before Williams began actively
 8
                                                                                     8
     option."
 9
                                                                                     9
                                                                                          firing the weapon?"
          A. It "could have been." I would agree with that, but
                                                                                                   Answer, "I don't remember if he had attempted to
10
                                                                                    10
      the time essence of that and the severity of -- of the threat
                                                                                          make -- I don't know if it was feasible at that time, but I
11
                                                                                    11
      that was responding to, in my mind, did not allow him to do
                                                                                    12
                                                                                          don't remember the board discussing that, no."
12
                                                                                                    Question, "So the board's discussion was limited at a
13
                                                                                    13
                                                                                          time period after Mr. Williams began actively firing his
14
          Q. You have an opinion that the review board's process
                                                                                    14
                                                                                          rifle?"
1.5
      of assessing the incident was performed consistent with
                                                                                    15
      expected law enforcement standards. I'm trying to find the
                                                                                    16
                                                                                                   Answer, "Yes."
16
      actual spot there. This would be with respect to Opinion 6.
                                                                                                    Is that consistent with your knowledge of the
17
                                                                                    17
      It's you just have an investigation of the incident there at
18
                                                                                    18
                                                                                          testimony in this case?
19
      page 47. I'm trying to find the spot where you said it in the
                                                                                    19
                                                                                                         MR. LUTE: Objection. Go ahead.
                                                                                               A. Without reading it, but from my impression of it,
20
                                                                                    20
21
               You write, "As I would expect," -- this is on
                                                                                    21
                                                                                          yes, without having it in front so I can go back over it, but,
22
      page 50. It's the last opinion. "As I would expect,
                                                                                    22
      command" -- or, "CPD commanders complied with their policy and
                                                                                               Q. Do you -- do you believe that it was appropriate for
```

243 244

the board to limit the time period of its review to the time

after Williams began firing his rifle in deciding whether Huber

23

24

2.5

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- committed any policy violations? think it would violate his training. A. Yes. 2 Q. Would he have been disciplined for that, you think? 2 3 O. And why is that? 3 A. I don't know. I know -- or all I can say is I can 4 A. Because that's the core of this -- of the facts of 4 give you a lot of examples where there was no law enforcement this case, of this incident, in my mind. response on active gunfire where they were disciplined and O. So the core of -- of it is -- what does that mean? 6 6 where numerous lives were lost because of inaction of police This is the core of -officers. A. That's a central feature, a central focus. O. I think we saw that from the holiday. 9 Q. So for you as well, your focus is -- or the core 9 A. Yes, sir, we did. feature is the gunfire that is sounding from the porch that 10 O. In this particular case, do you have any belief that 10 Huber hears when he's in the street? the -- that the officer -- that Officer Huber could have 11 11 averted the shooting death of my client? 12 A. Yes. Because that led to his response, which was MR. LUTE: Objection. You may answer. 13 appropriate, which I've already indicated. And then having 13 to -- based on the create of the need and his perception, 14 A. No. 14 firing self-protection and self-defense by firing his firearm 15 O. Do you have any belief or thought at all based on 16 at Mr. Williams. 16 your training, knowledge, or experience that Mr. Huber failed COURT REPORTER: I'm sorry, say that last part to take the time to assess and to connect with or communicate 17 17 18 18 with my client at any point? THE WITNESS: And firing his firearm at 19 19 A. No, sir. 20 Mr Williams 20 Q. Would there have been anything improper or wrong for 21 21 Huber to stay by his car until backup arrived, in light of the 22 22 23 sound that he heard? Did that violate any training that you're 23 go into the house as he arrived? 24 24 aware of? A. He's trained to go to the gunfire, and so yeah, I
- from. So for him to arrive on the scene -- and he testified to 1 this, as I recall, that typically when you come in, you like to 2 park maybe a block away or two. Here, he happened to come in 4 and there he finds that this is where the actual qunshot perhaps was coming from. 6 So had he gone lights and siren, I think that 7 would've put him in more jeopardy because he didn't know what the unknowns were. He didn't know what was there or what was 8 9 not there or if someone, as I say in my report, had set up an ambush waiting, because typically some folks know, oh, yeah, 10 officers may come with lights and siren, which is like, "Here I 11 12 am. Here I am." And that's not a safe thing for the officer 13 to do, and certainly I think that's evidence in this case. Q. Is there any evidence in this case that Mr. Huber 14 1.5 faced an ambush? 16 A. No. But he didn't know what he was going to face. Q. And in light of not knowing what he was going to 17 18 face, would it have been prudent for him to have his lights and 19 sirens on to alert individuals that he was arriving? A. Not in my mind, no, sir. 20 21 Q. The more prudent tactic in your mind is to keep 22 lights and sirens off? A. Yes. In this kind of situation, yes, where you don't 23

O. And then the other question I have is, is there any

24

25

have the knowns.

Q. What factual basis do you have for believing that him arriving lights and sirens would have put him in danger as he testified to seeing the man go into the house -- seeing a man A. It would alert the neighborhood. It would alert other people. He doesn't know where the shooting is coming 1 factual support for the notion that he was in an area of the 2 City of Canton known to either ambush or create murderous conditions for police officers? A. I don't know that, sir. 4 5 Q. Do you know of Mr. Huber's prior history with 6 7 A. I don't. I remember looking just briefly at his criminal history, but I don't know the extent of that. I can't 8 9 comment on that. Q. Did you review any documentation or information at 10 all that discussed any prior uses of force involving Huber? 11 12 A. I don't see that -- I didn't see that. Q. Were you provided it? 13 MR. LUTE: Objection. Go ahead. 14 15 A. I don't recall that, sir, actually. I didn't -- that 16 was not my focus. Q. If you knew that he had been involved in a prior 17 shooting, would that have any bearing or would you have wanted to know that as an expert? O. And if he had been involved in a prior shooting where someone had died, would that even mattered to you?

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1	Q. If you had been aware that officers were not	1	CERTIFICATE
2	disciplined for uses of force at the City of Canton, would that	2	STATE OF GEORGIA,
3	be anything that you would want to know?	3	COUNTY OF TIFT:
4	MR. LUTE: Objection. Go ahead.	4	I hereby certify that the foregoing transcript was taken
5	Q. Would that would that impact your opinions at all	5	down, as stated in the caption, and the questions and answers
6	in this case?	6	thereto were reduced to typewriting by computer-aided
7	A. No, sir, no.	7	transcription under my direction; that the foregoing 249 pages
8	Q. If officers were allowed to run lawless through the	8	represent a true, correct, and complete transcript of the
9	city, would that be something you'd want to know?	9	evidence given on the 4th of March 2024, by the witness
10	A. No, sir. I'm looking at the fact-based pattern on	10	DARRELL L. ROSS, Ph.D. who was first duly sworn by me.
11	this case and this case in law. That's it.	11	I further certify that I am not of kin or counsel to the
12	MR. DICELLO: I have no further questions at	12	parties in the case, am not in the regular employ of counsel
13	this point.	13	for any of the said parties, nor do I have any interest in the
14	MR. LUTE: All right. He'll read.	14	outcome or events of the case.
15	(Whereupon, the deponent or a party having	15	I further certify that the original of this deposition
16	specifically reserved reading and signing of the deposition,	16	will be filed with Robert F. DiCello, Esquire, Counsel for the
17	the taking of the deposition was concluded at 6:20 p.m. the	17	Plaintiff.
18	same date.)	18	MILLIAN COURT AND COURT AN
19	(Plaintiff's Exhibits 1 through 24 were marked for	19	This the 20th day of March 2024.  Debbie Young Certified Court Reporter Certificate No. 6072-1397-4926-1312
20	identification by the court reporter.)	20	
21		21	Tebbie young
22		22	Debbie Young Certified Court Reporter
23		23	Certificate No. 6072-1397-4926-1312
24		24	
25		25	
			250
	249		
			·
1	DISCLOSURE	1	ERRATA SHEET
2	STATE OF GEORGIA WITNESS: Darrell L. Ross, Ph.D.	2	Deposition of DARRELL L. ROSS, Ph.D.
3	COUNTY OF TIFT	3	I do hereby certify that I have read the foregoing
4	Pursuant to Article 10-B of the Rules and Regulations of	4	transcript of my testimony given on March 4, 2024, and that: 1) There are no changes noted.
5	the Board of Court Reporting of the Judicial Council of	5	2) The following changes are noted: Corrections to be made pursuant to Rule 30(7)(e) of the Federal
6	Georgia, I make the following disclosure:	6	Rules of Civil Procedure and/or Georgia Code Annotated 9-11-30(e), both of which read in part: Any changes in form or
7	I, Debbie Young, am a Georgia Certified Court Reporter. I	7	substance which you desire to make shall be entered upon the depositionwith a statement of the reasons givenfor making
8	am here as an independent contractor.	8	them. Accordingly, to assist you in effecting corrections, please use the form below:
9	I am not disqualified for a relationship of interest under	9	Page No Line No should read:
10	the provisions of O.C.G.A. 9-11-28(c).	10	
11	I was contacted by the offices of Memory Reporting, Inc.,	11	And the reason for the change is:
12	to provide court-reporting services for these proceedings.	12	Page No Line No should read:
13	I will not be taking this deposition under any contract	13	
			And the reason for the change is:

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And the reason for the change is:

Delbie Lung Certified Court Reporter No. 6072-1397-4926-1312

Dated this 4th day of March 2024.

been made to cover this deposition.

that is prohibited by O.C.G.A. 15-14-37 (a) or (b).

I have no written contract to provide reporting services

I will charge my usual and customary rates to all parties

with any party to the case, any counsel in the case, or any

reporter or reporting agency from whom a referral might have

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in the case.

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And the reas	on for the change is:	
_	DARRELL L. ROSS, Ph.D.	
Signed befor	re me this day of	
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